

APR 8 2003

STATE OF ARIZONA  
DEPARTMENT OF INSURANCE

DEPT. OF INSURANCE  
BY Kath

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In the Matter of: )  
 )  
HYLAND ASHMORE STOKES, JR., and )  
ESTATE PLANNING PROTECTION, INC., )  
 )  
Respondents. )  
\_\_\_\_\_ )

Docket No. 03A-011-INS

**ORDER**

On March 31, 2003, the Office of Administrative Hearings, through Administrative Law Judge Allen Reed, 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, except for Conclusion of Law No. 10, which is rejected.
2. Respondents' insurance producer licenses shall be suspended for twelve (12) months, effective thirty days after 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.

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 8<sup>th</sup> of April, 2003

6  
7 

8 \_\_\_\_\_  
9 Charles R. Cohen  
10 Director of Insurance

11 A copy of the foregoing mailed  
12 this 8<sup>th</sup> day of April, 2003

13 Sara M. Begley, Deputy Director  
14 Gerrie L. Marks, Executive Assistant for Regulatory Affairs  
15 Mary Butterfield, Assistant Director  
16 Catherine O'Neil, Consumer Legal Affairs Officer  
17 Steve Ferguson, Assistant Director  
18 Rebecca Sanchez, Producer Licensing Administrator  
19 Bob Hill, Investigator  
20 Arizona Department of Insurance  
21 2910 N. 44th Street, 2<sup>nd</sup> Floor  
22 Phoenix, AZ 85018

23 Office of Administrative Hearings  
24 1400 W. Washington, Suite 101  
Phoenix, AZ 85007

Jennifer Boucek  
Assistant Attorney General  
1275 W. Washington  
Phoenix, AZ 85007

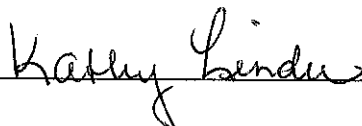
Christy Brown, Esq.  
Tasha Cycholl, Esq.  
Low & Childers, PC  
2999 N. 44<sup>th</sup> Street, Suite 250  
Phoenix, AZ 85018

- 1 Baltimore Life Insurance Company  
10075 Red Run Boulevard  
2 P.O. Box 1050  
Owings Mills, MD 21117-4871  
3
- 4 Beneficial Life Insurance Company  
36 South State Street  
Salt Lake City, UT 84136-0001  
5
- 6 Conseco Senior Health Insurance Company  
Conseco Annuity Assurance Company  
11815 North Pennsylvania Street  
7 Carmel, IN 46032
- 8 Old American Insurance Company  
3520 Broadway  
9 Kansas City, MO 64111-2565
- 10 Fortis Benefits Insurance Company  
P.O. Box 419052  
11 Kansas City, MO 64141-6052
- 12 Fidelity and Guaranty Insurance Underwriters, Inc.  
P.O. Box 39600  
13 Phoenix, AZ 85069-9600
- 14 Assured Life Association  
P.O. Box 266000  
15 Littleton, CO 80126-6000
- 16 American Travelers Assurance Company  
5700 Westown Parkway  
17 West Des Moines, IA 50266-8221
- 18 Fortis Insurance Company  
P.O. Box 3050  
19 Milwaukee, WI 53201-3050
- 20 Security-Connecticut Life Insurance Company  
20 Security Drive  
21 Avon, CT 06001-4226

22

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1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2  
3 In The Matter Of An Appeal By:

**No. 03A-011-INS**

4  
5 Hyland Ashmore Stokes, Jr. and Estate  
6 Planning Protection, Inc.  
7 Consultants, Inc.,

**ADMINISTRATIVE LAW JUDGE  
DECISION**

8 Petitioner,  
9  
10

11  
12 **HEARING:** March 18, 2003

13 **APPEARANCES:** Jennifer Boucek, Assistant Attorney General, for the State  
14 Tasha Cycholl, Esq. and Christy Brown, Esq. for the Respondent

15 **ADMINISTRATIVE LAW JUDGE:** Allen Reed  
16

17 **Findings of Fact**

- 18 1. The Respondent is currently licensed by the Arizona Department of Insurance  
19 (Department), to transact insurance as a resident life producer, Arizona license  
20 no. 3179. The Respondent, Hyland Ashmore Stokes, Jr. referred to as Stokes or  
21 the Respondent for the purpose of this decision, has been licensed for  
22 approximately 15 years and doing business as Estate Planning Protection, Inc. a  
23 resident agency to transact life and accident /health insurance, under Arizona  
24 license no. 41286.  
25  
26 2. In late 1998 or early 1999, Stokes became involved in a business venture  
27 through a fellow church member, Ronald Goble (Goble).  
28  
29 3. Based on the evidence, the nature of the venture was the sale of an interest  
30 (membership units) subsequently determined to be securities, in three  
companies identified as Hotel Connect LLC (Hotel Connect), World Cash

Office of Administrative Hearings  
1400 West Washington, Suite 101  
Phoenix, Arizona 85007  
(602) 542-9826

1 Providers LLC (World Cash), and later, Mobile Cash Systems LLC (Mobile  
2 Cash).

- 3 4. Exhibit 8 shows that certain advice was given by a Davis Wright Tremaine LLP  
4 (Tremaine), regarding the Hotel Connect venture. The expertise of Tremaine to  
5 render the advice it gave was not established on the record. Nevertheless,  
6 Tremaine advised Hotel Connect that the sale of Class A Membership units in  
7 Hotel Connect, did not require registration under the Federal Securities Act of  
8 1933 (Securities Act). Tremaine asserted the sales were exempt because they  
9 would be made to accredited investors (persons with certain minimum net worth-  
10 income standards, or persons or entities with standards which create a  
11 presumption of financial or investment knowledge), or to 35 or fewer non-  
12 accredited investors to whom certain disclosure was to be made. According to  
13 the Tremaine letter, no sales were to be made to non-accredited investors.  
14
- 15 5. A December 2, 1997, opinion letter from the law firm of Jennings, Strouss &  
16 Salmon P.L.C., to World Cash (Exhibit B), stated that World Cash's proposed  
17 sale of "automated teller machines" (more precisely Cash Ticket Machines or  
18 CTM) , to Arizona residents, "do not constitute the offer or sale of securities".  
19 The facts underlying the opinion are not necessarily the same facts as those  
20 governing the actual sales (the opinion suggests on actual sale of ATM's to a  
21 purchaser with no entrepreneurial or management efforts of World Cash or  
22 others), whereas other evidence (Exhibit E), suggests World Cash actually  
23 retains the machine "World Cash Providers contracts with the franchisor...",  
24 Small Business Opportunities, May 1999 and "World Cash Providers pays for,  
25 supplies and installs the CTM's...", Correa, Tracy. "Success in the cards for  
26 Fresno Company", The Fresno Bee, January 25, 1999.  
27
- 28 6. Stokes attended sales seminars put on by the companies in Fresno, California  
29 and Las Vegas, Nevada. Endorsements were given by sports figures and fast  
30 food franchisees. Persons affiliated with the companies gave presentations and

1 made representations regarding the nature of the businesses and promoting the  
2 sale of interest in the companies. These interests were subsequently determined  
3 to be securities by the Arizona Corporation Commission (ACC), despite the  
4 advice of Tremaine or Jennings, Strouss & Salmon. In view of the ACC  
5 determination, and for the purpose of making further findings of fact in this case,  
6 the interest in Hotel Connect, World Cash and Mobile Cash being sold by the  
7 Respondent shall be referred to as securities although the ACC determination  
8 was made after the Respondent's sales were made.

- 9
- 10 7. The evidence suggests that life insurance agents may have been favored as  
11 potential sales persons for the securities because of their client base. The  
12 security salesperson is drawn to making the sales because of the potential for a  
13 larger commission (up to 20%), than a standard insurance product.
- 14 8. Stokes began selling securities without understanding the financial-legal nature  
15 of the product he was selling or its financial soundness. He testified he relied on  
16 the Tremaine, and Jennings, Strouss & Salmon opinions, and on representations  
17 from persons affiliated with the businesses (persons with an interest in the sales  
18 of the securities such as persons in management and marketing).
- 19 9. Stokes sold interest in all three of the referenced companies. All these sales  
20 were determined to be sales of securities. The majority of the sales involved  
21 Hotel Connect (1.1 million of 1.5 million).
- 22 10. The State presented testimony from William Cornish (Cornish) a retired  
23 Midwestern farmer. Cornish met the Respondent in March, 1998 and purchased  
24 two whole life insurance policies. In April, 1998 Cornish bought three annuities  
25 through the Respondent. In April, 1999, Cornish and Stokes met again at the  
26 request of Cornish who wanted to invest money he was continuing to receive  
27 from the sale of his Iowa farm.
- 28 11. Cornish bought a total of \$20,000.00 in Hotel Connect. His testimony was  
29 somewhat uncertain but it appears the Respondent may have told Cornish the  
30

1 investment earned interest at 9%. The issue is unclear because Cornish was  
2 testifying from notes made with his wife who did not testify. He was confused  
3 about some factual details. Cornish testified Stokes made no representation that  
4 either the principal or interest was guaranteed. Cornish also received a letter  
5 from Hotel Connect which reaffirmed there was no guarantee of a return on the  
6 investment. Cornish testified he also bought \$45,000.00 in Mobile Cash Systems  
7 (Mobile Cash) from the Respondent and cashed in his annuities as well as  
8 money invested in Ginnie Mae (Government National Mortgage Association),  
9 issuer of quasi government insured mortgage backed securities.

10 12. According to Cornish, he received approximately four monthly payments from  
11 Mobile Cash but no other interest or profits, nor has he received a return of  
12 principal on investments made through the Respondent. Cornish invested  
13 \$65,000.00. This constitutes 50% of his savings. He testified he would not trust  
14 the Respondent today.

15 13. Freda Klein (Klein), also purchased securities in Hotel Connect from Stokes. She  
16 believes the amount was \$10,000.00. She is unsure of the status of the principal  
17 and considers the Respondent "king, gentle, honest and trustworthy".

18 14. Don Deasy (Deasy), is a licensed insurance agent and has known the  
19 Respondent for 10 to 12 years. He considers him "hardworking, honest,  
20 trustworthy and conscientious". Deasy will continue to do business with and refer  
21 others to the Respondent.

22 15. Mike Burnidge (Burnidge), is the Respondent's pastor and has known the  
23 Respondent for seven years. He describes the Respondent as a  
24 "compassionate, outgoing, sincere man of prayer with a tender heart... honest  
25 and trustworthy".

26 16. Ward Bell (Bell) a wholesaler for life insurance companies and licensed by the  
27 Department has known and done business with the Respondent for 10 years. He  
28  
29  
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1 considers the Respondent "honest and trustworthy". He would continue to do  
2 business with the Respondent.

3 17. Michael Godlewski (Godlewski) also licensed by the Department, has known the  
4 Respondent as a friend for 30 years. He considers him to be "honest and hard  
5 working for the best interest of his clients".

6 18. Lawrence Moon (Moon) was the Respondent's attorney in the ACC Consent. He  
7 testified that in his opinion the Stokes exercised reasonable diligence with  
8 respect to the merits of the products he was selling.

9 19. On or about August 1, 2001, the ACC issued a Notice of Opportunity for Hearing  
10 Regarding Proposed Order to Cease and Desist, (and additional sanctions), to  
11 the Respondent and others.

12 20. On October 16, 2001, the Respondent with the assistance of counsel entered  
13 into a Consent Order, Exhibit 7 (Consent) with the ACC for Hotel Connect and  
14 World Cash. Stokes acknowledged the Consent could be used by other state  
15 agencies and also agreed not to contest the factual or legal basis for the Order.  
16 The Consent was signed by the Respondent in his personal capacity and also as  
17 president of Estate Planning Protection, Inc.

18 21. In general terms the Consent asserts that Stokes (and others) informed investors  
19 either verbally or through sales brochures that investment in Hotel Connect  
20 would yield high returns, had minimal risk, and was liquid. Other admissions  
21 were that Hotel Connect subscriptions provided that they were to be sold only to  
22 accredited investors when in fact many sales were made to non accredited  
23 investors, investors in World Cash exercised no control over the management of  
24 the investment, investors were to receive a monthly share of profits but revenue  
25 payments from World Cash stopped in June, 2000, statements made in  
26 connection with the offer to sell or sale of the securities were untrue. These  
27 untrue statements included misrepresentation regarding the safety of the  
28 investments and failing to disclose specific risk, not disclosing material financial  
29  
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1 or background information of the issuers or principals, non delivery of equipment  
2 which was to be delivered within 30 to 60 days of the contract, misrepresentation  
3 regarding the source of monthly revenue payments, failing to disclose that in  
4 February, 2000 the State of California had issued orders finding the investment  
5 procedure regarding CTM's to be the sale of securities (the above listing does  
6 not include all the items set forth in the Consent).

7 22. The various violations which the Respondent admitted are: A.R.S. §44-1841,  
8 Sale or offer to sell unregistered and non exempt securities; A.R.S. §44-1842,  
9 Sale or offer to sell securities while not registered as a dealer or salesman;  
10 A.R.S. §44-1991(A)(2), Sale or offer to sell securities while making untrue  
11 statements or misleading omissions of material fact.

12 23. The Consent imposed sanctions including joint and several liability to make  
13 restitution to Hotel Connect investors in the amount of \$1,120,000.00 plus 10%  
14 interest, agreeing not to sell securities unless the Respondent(s) is registered as  
15 a dealer or salesman, not to exercise managerial authority or hold a greater than  
16 10% interest in a security or investment advisory business, and a civil penalty of  
17 \$25,000.00.

18 24. There is insufficient evidence as to the present status of Estate Planning  
19 Protection, Inc. According to the Respondent he is now only an employee of the  
20 corporation. The Respondent resigned as an officer of the company prior to the  
21 hearing. According to the Respondent, his wife who is also licensed by the  
22 Department, is the current president and has always been 100% shareholder.

#### 23 **Conclusions of Law**

24 The Notice of hearing alleges the Respondent violated A.R.S. §20-295(A)(8) in  
25 that the Respondent's conduct constituted fraudulent, coercive or dishonest practices,  
26 demonstrated incompetence, untrustworthiness or financial irresponsibility in the  
27 conduct of business in this state or elsewhere.

28 Counsel for the Arizona Department of Insurance (Department) asserted that  
29 the cited statutory provision includes the conduct in any business and not merely  
30

1 insurance business because other insurance statutes specifically refer to insurance  
2 business when the intent is to limit the application of the statute to insurance related  
3 matters. An example of this is A.R.S. 20-106 "(A) 'Transact' with respect to insurance  
4 includes" or "(B)... is deemed to constitute the transaction of insurance business in this  
5 state." There was no legal argument presented against this interpretation and the  
6 Department's interpretation and application is accepted.

- 7 1. The application of the law to the facts of this case is relatively straightforward.  
8 There is no evidence that the Respondent was involved in the planning of what  
9 has been shown to be an illegal scheme based on misrepresentation and a  
10 failure to disclose information.
- 11 2. The terms of the Consent are clear and not subject to challenge. The  
12 Respondent had the advise of counsel and the opportunity to defend against the  
13 allegations. The economic hardship of defending could be raised by almost every  
14 Respondent who enters into a Consent. If the economic hardship plea is given  
15 any consideration it would open every Consent to collateral attack thereby  
16 defeating one of its main purposes which is to promote administrative economy  
17 (for both parties).
- 18 3. The evidence is clear that the Respondent was an active participant in promoting  
19 the scheme and assisting in its unlawful purpose by unlawfully selling the  
20 securities to people like Cornish who did not have the necessary information to  
21 make an informed decision before making the investment.
- 22 4. The most significant question to be answered is what was the Respondent's  
23 knowledge of the illegality of the sales and the misrepresentation (or non  
24 disclosure ) with respect to the financial soundness of an investment in any of  
25 the referenced businesses?
- 26 5. There is no direct evidence that the Respondent intentionally and consciously  
27 misinformed investors, either by knowingly giving false information or  
28 intentionally withholding information which should be disclosed.
- 29 6. However, irrespective of the testimony by the Respondent's former counsel, the  
30 evidence showed the Respondent did not exercise reasonable diligence or  
circumspection with respect to his conduct in making these sales. This lack of

1 diligence and care helped carry the unlawful scheme forward. The Respondent's  
2 reliance on endorsements by sports figures and persons who have a direct  
3 interest in increasing sales, is without justification. Hopefully one does not need  
4 to go into detail about why such reliance is misplaced. The so called  
5 endorsement letters and "news" articles should engender no greater sense of  
6 trustworthiness (they are more promotional rather than analytical with respect to  
7 financial worthiness). Any reliance on the Tremaine, and Jennings, Strouss &  
8 Salmon opinions might have been less misplaced, except such reliance depends  
9 on the Respondent understanding the issues being addressed. He did not  
10 understand what he was selling (securities) and had no idea of the financial  
11 soundness of the investments. He did not understand the underlying basis for  
12 the legal opinions. It is not reasonable reliance to rely on something which is not  
13 understood. reliance (which in the this case was irresponsible) is offered in the  
14 nature of a prepared excuse, but it in reality it divests the Respondent of  
15 significant mitigation.

- 16 7. Absent substantial evidence to show fraud, it is concluded the Respondent  
17 demonstrated incompetence for the reasons stated in paragraph 6 above. He  
18 also demonstrated untrustworthiness. A lack of trust can be engendered not only  
19 by a person being purposely dishonest but also by a person not having the  
20 knowledge or expertise to engage in certain activities but nonetheless engaging  
21 in those activities. As to financial irresponsibility, it is concluded that the  
22 Respondent was financially irresponsible by being instrumental in having  
23 uninformed persons make investments in businesses and products the  
24 Respondent knew little about thereby resulting in the loss or likely loss of the  
25 money invested. Under the statute, the term financial irresponsibility can be  
26 construed to apply to how a person financially handles their own business as  
27 well as how a person in the conduct of their business, impacts the financial well  
28 being of others. It is therefore concluded the Respondent has violated the cited  
29 statute.
- 30 8. A client (Klein), who does not know (and seems to have little concern), regarding  
her Hotel Connect investment, a pastor, a friend of 30 years, and business

1 associates, all testified concerning the Respondent's honesty and  
2 trustworthiness. The character references cannot be totally ignored but must be  
3 considered in context of each individuals' relationship to the Respondent.

4 9. Under the facts and conclusions of this case as stated above, it is concluded  
5 that the Respondent's activities demonstrated incompetence, untrustworthiness  
6 and financial irresponsibility thereby violating A.R.S. §20-295(A)(8).

7 10. The only remaining issue is whether the Respondent's license should be revoked  
8 or suspended with the imposition of a civil penalty. It is the opinion of the  
9 Administrative Law Judge that revocation is properly reserved for the most  
10 serious offenses (intentional and knowing violations). If this was not the case,  
11 and other factors being equal, there is little by way of sanction to separate an  
12 intentional and knowing violation from a negligent or careless violation. In  
13 addition, revocations for activity which constitutes a violation would normally be  
14 most appropriate (it is understood that the applicable statute in this case  
15 constitutes an exception), for conduct related to improper activity which is related  
16 to the license which is being disciplined. In the instant case it is evident that the  
17 Respondent violated the statute and was party to a course of conduct which  
18 seriously injured others financially. However, the Respondent's years as a  
19 licensed insurance agent and his reputation among peers and others in the  
20 community cannot be totally dismissed.

### 21 **Recommended Order**

22 In view of the foregoing it is recommended pursuant to A.R.S. §20-295 that the  
23 director of the Department suspend the resident life producer license number 3179  
24 of Respondent Hyland Ashmore Stokes, Jr. and license number 41286 of Estate  
25 Planning Protection, Inc., for a period not more than 12 months as is deemed  
26 appropriate by the director.

27 It is further recommended pursuant to A.R.S. §20-295(F)(1) that in addition to the  
28 recommended suspension, that the director impose a civil penalty of \$250.00 on the  
29 Respondent Hyland Ashmore Stokes, Jr. for the violation of A.R.S. §20-295(A)(8).  
30 Said civil penalty to be payable within 30 days of the effective date of the Order  
entered in this matter.

1 Done this day, March 31, 2003  
2



3  
4 Allen Reed  
5 Administrative Law Judge  
6

7 Original transmitted by mail this  
8 2 day of April, 2003, to:  
9

10 Charles R. Cohen, Director  
11 Department of Insurance  
12 ATTN: Kathy Linder  
13 2910 North 44th Street, Ste. 210  
14 Phoenix, AZ 85018

15 By   
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