

SEP 17 2003

STATE OF ARIZONA

DEPARTMENT OF INSURANCE DEPT. OF INSURANCE
BY Kate

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|-----------------------|---|------------------------|
| In the Matter of: |) | Docket No. 03A-108-INS |
| |) | |
| MICHAEL GERARDY AWES, |) | ORDER |
| |) | |
| Respondent. |) | |
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On September 9, 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. Respondent's insurance producer's license 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 16th of September, 2003

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7 Charles R. Cohen
8 Director of Insurance

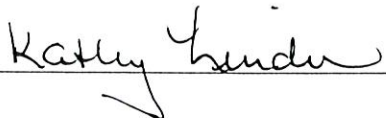
9 A copy of the foregoing mailed
10 this 17th day of September, 2003

11 Gerrie L. Marks, Acting Deputy Director for Regulatory Affairs
12 Mary Butterfield, Assistant Director
13 Catherine O'Neil, Consumer Legal Affairs Officer
14 Rebecca Sanchez, Licensing Administrator ✓
15 Arnold Sniegowski, Investigations Supervisor
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1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 **IN THE MATTER OF:**

No. 03A-108-INS

4 **MICHAEL GERARDY AWES,**

5 **Respondent.**

ADMINISTRATIVE

LAW JUDGE DECISION

8
9 **HEARING:** August 26, 2003

10 **APPEARANCES:** Assistant Attorney General Jennifer Boucek on behalf of the
11 Arizona Department of Insurance; Lawrence Marks on behalf of Michael Gerardy Awes

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

13
14 **FINDINGS OF FACT**

- 15 1. At all times material to this matter, Michael Gerardy Awes ("Respondent")
16 was licensed by the Arizona Department of Insurance ("Department") as a life producer.
17 2. On April 18, 2003, Respondent filed an application for a life producer license
18 ("Application") with the Department.
19 3. On April 18, 2003, the Department issued Respondent a life producer
20 license, license number 150924, which expires April 30, 2005.
21 4. Department Investigator Helene Tomme ("Investigator Tomme") testified that
22 the Department learned that the Minnesota Department of Commerce, which oversees
23 insurance licensees in the State of Minnesota, issued two Consent Orders on July 11,
24 2001, one involving Respondent's Minnesota securities salesman's license and the
25 other involving his insurance agent license.
26 5. On July 4, 2001, Respondent entered into two Consents to Entry of Order
27 regarding his securities and insurance agent licenses wherein Respondent represented
28 that he read both Consent Orders (Exhibits 4 & 6) , that he knew and understood their
29 contents and effect, that he had been advised of his right to a hearing, that he was
30 either represented by legal counsel or been advised of his right to have legal counsel,

1 and that by consenting to the entry of the Consent Orders, Respondent agreed that the
2 Consent Orders constituted the entire agreement between the Respondent and the
3 Minnesota Department of Commerce.

4 6. One Consent Order (Exhibit 5) revoked the insurance agent license of
5 Respondent effective as of July 11, 2001 based on the determination of the
6 Commissioner of the Minnesota Department of Commerce that Respondent had
7 violated provisions of the Minnesota insurance laws.

8 7. It is undisputed that the acts of Respondent that gave rise to the above-
9 mentioned Consent Orders involved securities transactions and not the transaction of
10 insurance business.

11 8. The Consent Order relating to Respondent's insurance agent license
12 provides that the Commissioner was prepared to proceed against Respondent based
13 on violations of Minnesota law alleging that Respondent engaged in "fraudulent,
14 coercive, deceptive, or dishonest acts or practices whether or not such acts or practices
15 involved the business of insurance" and "engaged in an act or practice, whether or not
16 the act or practice directly involve[d] the business for which the person is licensed or
17 authorized, which demonstrate[d] that the applicant or licensee is untrustworthy,
18 financially irresponsible, or otherwise incompetent or unqualified to act under the
19 authority or license granted by the commissioner."

20 9. On July 11, 2003, the Commissioner of the Minnesota Department of
21 Commerce issued a Consent Order revoking Respondent's securities agent license
22 based on violations of Minnesota securities law.

23 10. During the hearing, Respondent testified that the complaints underlying the
24 above-mentioned Consent Orders involved allegations that he sold securities of two
25 clients without their consent. Respondent asserted that while he believed the
26 allegations were unfounded, because he had already decided to relocate to Arizona to
27 attend to his mother and did not want to incur the expense of hiring an attorney, he
28 decided to agree to the Consent Orders.

29 11. The above-mentioned Consent Orders provide that they were entered into as
30 informal disposition of the matters, prior to formal action being taken by the Minnesota

1 Department of Commerce against Respondent's securities agent and insurance agent
2 licenses.

3 12. Thomas L. Schultz ("Mr. Schultz"), an insurance agent licensed in the State of
4 Arizona for the past thirty-three years, testified that he entered into a business
5 relationship with Respondent about three months ago wherein Respondent sells life
6 insurance products to Mr. Schultz's clients through Mr. Schultz's insurance agency.

7 13. Mr. Schultz testified that he does not like to sell life insurance products and that
8 Respondent is knowledgeable and capable of selling life insurance products.

9 14. Mr. Schultz testified that since he entered into the above-mentioned business
10 relationship with Respondent, he has not received any complaints regarding
11 Respondent and is satisfied with Respondent's performance.

12 15. Mr. Schultz testified as to how he first became acquainted with Respondent.
13 According to Mr. Schultz, Larry Oliver ("Mr. Oliver"), Mr. Schultz's district manager with
14 Farmer's Insurance, contacted him and mentioned that Respondent had been working
15 with Mr. Oliver for about a year arranging appointments and suggested that Mr. Schultz
16 might be able to use Respondent to sell life insurance products.

17 16. Subsequent to the above-mentioned telephone call, a meeting took place
18 wherein Mr. Oliver, Mr. Schultz and Respondent were in attendance. The purpose of
19 the meeting was to discuss the possibility of Respondent working in Mr. Schultz's
20 agency in the capacity of selling life insurance products for Mr. Schultz's clients. After
21 the meeting, Mr. Schultz entered into the above-mentioned business relationship with
22 Respondent wherein it was agreed that the commissions Respondent received for
23 selling life insurance products would be shared with Mr. Schultz.

24 17. Mr. Schultz testified that Respondent has sold several life insurance policies and
25 that he is pleased with the above-mentioned business arrangement he has with
26 Respondent.

27 18. Respondent testified similarly as to the events and facts surrounding the
28 business relationship he has with Mr. Schultz and how that came about.

29 19. Respondent submitted a letter from Mr. Oliver (Exhibit B) stating the Respondent
30 worked for Mr. Oliver in 2002 and 2003, that Respondent was reliable, courteous,
effective, honest, ethical and reliable employee. The letter states that Respondent

1 informed Mr. Oliver about "resigning" his insurance and securities licenses in Minnesota
2 because of security transactional problems and that the licenses were "classified" as
3 having been revoked.

4 20. It is noted that Mr. Oliver did not testify at the hearing and the Department did
5 not have an opportunity to cross-examine Mr. Oliver as to the circumstances
6 surrounding the authoring of the above-mentioned letter or his knowledge as to
7 Respondent's work or information that Respondent disclosed to him. Therefore, Mr.
8 Oliver's letter of August 22, 2003 is given little weight.

9 21. Respondent testified that he did not inform Messrs. Schultz or Oliver about the
10 licensing problems he had in Minnesota or of the above-mentioned Consent Orders
11 until a few days prior to the hearing.

12 22. Mr. Schultz testified that he was not made aware of any problems Respondent
13 had with his insurance agent license in Minnesota until he was asked to write a letter on
14 behalf (Exhibit A) just a few days prior to the hearing.

15 23. Mr. Schultz testified that Respondent did not provide detailed information as to
16 the facts and circumstances underlying the above-mentioned Consent Orders but that
17 based on his opinion as to Respondent's work abilities and the business relationship
18 did not change upon learning that information.

19 24. The Administrative Law Judge notes that Respondent did not disclose his prior
20 licensing history with the Minnesota Department of Commerce to Mr. Schultz or Mr.
21 Oliver until such time after the Department initiated the instant disciplinary proceeding.

22 25. Respondent testified that at the time he completed the Application, he believed
23 he answered the questions truthfully.

24 26. With respect to answering the questions truthfully, Respondent testified that he
25 believed he had resigned his insurance and securities licenses in Minnesota, that he
26 had mentioned that was his intent to the Minnesota regulators, and that he did not keep
27 a copy of the Consent Orders nor did he receive copies of the fully executed Consent
28 Orders and had not seen them until he received them from the Department.

29 27. Respondent entered the Consent to Entry of the Consent Orders representing that
30 he had read and understood them and now at this proceeding asserts that he did not pay
attention to the terminology that the Licenses were revoked. The language in the

1 Consent Orders that the licenses are revoked is clearly set forth and is quite noticeable,
2 considering the nature of the documents and that each consist of two pages containing
3 four paragraphs preceding the revocation paragraph. Therefore, Respondent is held to
4 have understood the meaning and effect of the Consent Orders, is bound by its terms,
5 and should have represented to the Department that the licenses were revoked for the
6 Department's consideration in determining whether to approve the Application.

7 28. The weight of the evidence of record established that Respondent answered
8 Question B of Section VII of the Application incorrectly by representing that he has not
9 had any professional license revoked when in fact he has had a Minnesota insurance
10 agent and securities agent license revoked.

11 29. While Respondent testified that he believed he answered the above-mentioned
12 question truthfully at the time and asserted that his answer to Question B of Section VII in
13 the Application should be read with his answer to Question C of Section VII where in
14 Respondent had inserted the words: "resigned 01". Respondent asserted that he
15 believed he had resigned his insurance and securities licenses and because he had not
16 had a copy of the above-mentioned Consent Orders present he did not recall that the
17 licenses were revoked. However, the Administrative Law Judge finds that the action taken
18 by the Minnesota Department of Commerce in revoking Respondent's insurance and
19 securities licenses, within the past two years is a significant one that a licensee would and
20 should recall. Further, assuming arguendo, that Respondent did not recall the details of
21 such action, he did recall that some action had been taken and had an obligation to
22 research and obtain factually correct information as to his licensing history with the
23 Minnesota Department of Commerce when he completed the Application.

24 30. The Administrative Law Judge finds that under the facts presented herein, there is
25 a risk to the public if Respondent is allowed to remain licensed as an insurance producer.

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CONCLUSIONS OF LAW

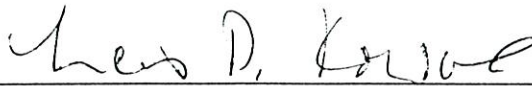
1. Respondent's conduct in submission of an incorrect answer to Question B of Section VII of the Application, which constituted materially untrue information, constitutes a violation of A.R.S. § 20-295(A) (1).
2. Respondent's conduct in answering Question B of Section VII, of the Application constitutes misrepresentation of a material fact with the meaning of A.R.S. § 20-295(A) (3).
3. The above-determined violations of law and risk of public harm outweighs the consideration to be given to the economic effect Respondent's license revocation in Arizona would have upon Respondent, Respondent's mother, or Mr. Schultz.
4. The weight of the evidence of record established that Respondent's insurance and securities agent licenses in the State of Minnesota were revoked within the meaning of A.R.S. § 20-295(A) (9).
5. The above stated Findings of Fact and Conclusions of Law provide grounds for the Director of the Department to suspend or revoke Respondent's insurance producer's license and/or impose a civil penalty upon Respondent pursuant to A.R.S. § 20-295(A), (D) and (F).

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RECOMMENDED ORDER

Based on the above, it is recommended that the Respondent's Arizona insurance producer's license be revoked on the effective date of the Order entered in this matter.

Done this day, September 9, 2003.



Lewis D. Kowal
Administrative Law Judge

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Original transmitted by mail this
10 day of September, 2003, to:

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By 