

SEP 25 1996

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

DEPT. OF INSURANCE
BY CRJ/DI

In the Matter of)	Docket No. 96A-060-INS
)	
LAUREL LYNN TYRRELL and)	
INNOVATIVE FINANCIAL GROUP, INC.,)	
)	ORDER
Respondents.)	
_____)	

On August 21, 1996, the Office of Administrative Hearings, through Administrative Law Judge Lewis D. Kowal, submitted "Recommended Decision of Administrative Law Judge" in the above-captioned matter, a copy of which is attached hereto. The Director of the Arizona Department of Insurance has reviewed the Recommended Decision and makes the following findings of fact and conclusions of law and enters the following order.

Findings of Fact

1. At the hearing, the parties stipulated that in paragraphs numbered 9, 10, 13 and 16 in the Notice of Hearing, the year referenced in those paragraphs should be 1993 instead of 1994. The Notice of Hearing is amended accordingly to reflect the parties' stipulation.

2. Respondent Laurel Lynn Tyrrell ("Mrs. Tyrrell") is currently licensed by the State of Arizona Department of Insurance ("Department") as a life and disability insurance agent. That license is due to expire September 30, 1997. Mrs. Tyrrell has held an insurance agent's license issued by the Department since 1985 and to her knowledge has had no complaints filed with the Department.

3. Innovative Financial Group, Inc. ("Innovative") is a duly authorized Arizona corporation currently holding a life

1 and disability insurance agency license which expires December
2 31, 1997. Innovative originally obtained its life and
3 disability insurance agency license from the Department on
4 December 31, 1989. Innovative previously held a variable
5 annuity agency license which expired December 31, 1995.

6 4. Until February 21, 1996, Gene Tyrrell ("Mr.
7 Tyrrell") was the president of Innovative.

8 5. In approximately 1993, Mrs. Tyrrell became an
9 officer of Innovative. Mrs. Tyrrell became president of
10 Innovative upon Mr. Tyrrell's resignation on February 21, 1996.
11 Mrs. Tyrrell is presently the only officer of Innovative.

12 6. On November 16, 1991, Mr. Tyrrell, as president of
13 Innovative, filed an application for renewal of the agency
14 license held by Innovative (the "1991 renewal application").
15 The 1991 renewal application identified Mr. Tyrrell as president
16 and Mrs. Tyrrell as secretary/treasurer, and further identified
17 Mrs. Tyrrell, Jerry Prohaska, Doc Bachman and Pat Green as
18 "licensed individuals representing the agency".

19 7. The 1991 renewal application contained the
20 following certification executed by Mr. Tyrrell as president of
21 Innovative:

22 To the best of his/her knowledge, no person named in
23 "A" (Officers, Directors, Partners and/or Owners) or
24 "B" (All licensed individuals representing the agency)
25 or anyone designated in the license, since the last
26 agency application or renewal thereof, has committed
27 any act(s) which would constitute grounds for denial,
28 suspension, or revocation of insurance licenses,

1 except as set forth in a separate statement
2 accompanying this application and shall for a part
3 hereof.

4 8. On May 17, 1990, the Director of the Department
5 issued an Order in In the Matter of Gene Arthur Tyrrell, Docket
6 No. 7120, wherein Mr. Tyrrell had all of his insurance licenses
7 revoked based upon his admissions that in February, 1989 he
8 forged an insured's name on a \$20,000 loan request and
9 substituted his address for the insured's so that the loan check
10 would be mailed to his address. The revocation of Mr. Tyrrell's
11 insurance licenses was not disclosed in Innovative's 1991
12 renewal application.

13 9. On or about December 23, 1993, Mrs. Tyrrell
14 submitted an application to renew the agency license held by
15 Innovative (the "1993 renewal application"). The 1993 renewal
16 application was signed by Mrs. Tyrrell as secretary/treasurer.
17 The 1993 application identifies Mr. Tyrrell as president and
18 Mrs. Tyrrell as secretary/treasurer, and further identifies Mrs.
19 Tyrrell as the "licensed individual who represents the applicant
20 for the license being renewed".

21 10. Mrs. Tyrrell answered "No" to question 9.C. of
22 the 1993 renewal application, which asked:

23 SINCE APPLICANT'S LAST APPLICATION OR RENEWAL THEREOF,
24 has applicant or anyone designated in the license had
25 any professional, vocational, or business license
26 denied, suspended, revoked or restricted, or a fine
27 imposed by any public authority or withdrawn any
28 application for or surrendered any such license to

1 avoid any disciplinary action?

2 11. On April 6, 1993, an Order was issued in In the
3 Matter of Gene Arthur Tyrrell, Docket No. 8000, wherein after a
4 hearing the Director of the Department denied Mr. Tyrrell's
5 application for an insurance agent's license. This 1993 denial
6 of Mr. Tyrrell's application for an insurance agent's license
7 was not disclosed in Innovative's 1993 renewal application.

8 12. On June 9, 1993, an Opinion and Order was entered
9 by the Arizona Corporation Commission, Decision No. 58302, In
10 the Matter of the Salesman Registration of: Gene Arthur Tyrrell,
11 CRD #1169487, revoking the salesman registration of Mr.
12 Tyrrell. The revocation of the salesman registration of Mr.
13 Tyrrell was not disclosed in Innovative's 1993 renewal
14 application.

15 13. On December 15, 1995, Mrs. Tyrrell submitted an
16 application to renew the agency license of Innovative (the "1995
17 renewal application). The 1995 renewal application was signed
18 by Mrs. Tyrrell as secretary/treasurer. The 1995 renewal
19 application identified Mr. Tyrrell as president and Mrs. Tyrrell
20 as secretary/treasurer and further identified Mrs. Tyrrell and
21 Ron Brewer as the licensed individuals who represent Innovative
22 for the license being renewed.

23 14. Although Mr. Tyrrell was the president of
24 Innovative until February 21, 1996, the Department did not
25 establish that Mr. Tyrrell was designated in Innovative's 1991,
26 1993 or 1995 renewal applications nor in Innovative's license
27 itself as a person who was authorized to exercise the agent
28 powers conferred upon Innovative by the license nor did the

1 Department establish that Mr. Tyrrell engaged in any activities
2 that would indicate he had such authorization.

3 15. The certification clause in the 1991 renewal
4 application (quoted in Finding of Fact number 7) is ambiguous.
5 The subsection immediately preceding the certification requires
6 the applicant to provide "yes" or "no" answers to questions
7 relating to persons "designated in the license", and requires
8 signed, notarized statements for "yes" responses. Mr. Tyrrell
9 was not designated in the license and therefore Innovative's
10 responses to these affirmative inquiries was correct. The
11 certification clause is subject to at least two reasonable
12 interpretations: (1) the certification clause merely restates
13 the disclosure requirements set forth earlier in the application
14 as to persons designated in the license, as asserted by
15 Respondents; or (2) the certification clause imposes additional
16 disclosure requirements on persons other than those designated
17 in the license, including officers, as asserted by the
18 Department. Because the certification language is ambiguous,
19 substantial evidence was not presented to show that Innovative
20 was required to disclose Mr. Tyrrell's 1990 revocation in its
21 1991 renewal application.

22 16. The 1993 and 1995 renewal applications required
23 disclosure of actions regarding the applicant itself,
24 Innovative, or anyone designated in the license. Since Mr.
25 Tyrrell was not designated in Innovative's license to exercise
26 its powers Innovative was not required to disclose in its 1993
27 or 1995 renewal applications the 1993 denial of Mr. Tyrrell's
28 application for an insurance license or the 1993 revocation of

1 Mr. Tyrrell's salesman registration.

2 17. Although the Tyrrell's testimony that Mrs.
3 Tyrrell had no knowledge of Mr. Tyrrell's revocation and denial
4 proceedings until mid-1995 is not credible, a determination of
5 whether Mrs. Tyrrell knew of these proceedings is not necessary
6 in this proceeding.

7 CONCLUSIONS OF LAW

8 1. The Director has jurisdiction in this matter
9 pursuant to A.R.S. §§20-161 and 20-316.

10 2. Respondents' conduct does not constitute material
11 misrepresentations in obtaining or attempting to obtain any
12 insurance license in violation of A.R.S §20-316(A)(3).

13 3. Respondents' conduct does not constitute the
14 existence of any cause for which original issuance or renewal of
15 the Respondents' insurance licenses could have been refused
16 within the meaning of A.R.S. §20-316(A)(1).

17 4. Respondents' conduct does not constitute a record
18 of dishonesty in business or financial matters within the
19 meaning of A.R.S. §20-316(A)(1) together with A.R.S.
20 §20-290(B)(2).

21 IT IS HEREBY ORDERED THAT no action is taken on the
22 licenses of Laurel Lynn Tyrrell or Innovative Financial Group,
23 Inc. as to the matters alleged in the Notice of Hearing in this
24 matter.

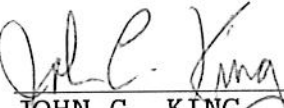
25 NOTIFICATION OF RIGHTS

26 The aggrieved party may request a rehearing with
27 respect to this Order by filing a written petition with the
28 Office of Administrative Hearings within 30 days of the date of

1 this Order, setting forth the basis for such relief pursuant to
2 A.A.C. R20-6-114(B).

3 The final decision of the Director may be appealed to
4 the Superior Court of Maricopa County for judicial review
5 pursuant to A.R.S. §20-166.

6
7 DATED this 25th day of September, 1996.

8
9 
10 JOHN C. KING
11 Director of Insurance

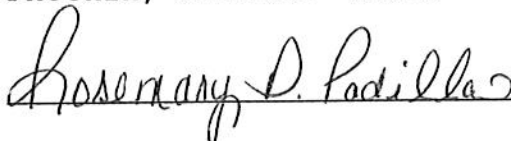
12 Copy of the foregoing mailed
13 this 25th day of September, 1996 to:

14 Office of Administrative Hearings
15 c/o Lewis D. Kowal
16 1700 West Washington, Suite 602
17 Phoenix, Arizona 85007

18 Kathryn Leonard
19 Assistant Attorney General
20 1275 West Washington
21 Phoenix, Arizona 85007

22 Michael Salcido
23 6991 East Camelback Rd., Suite D-302
24 Scottsdale, Arizona 85251-2487

25 Charles R. Cohen, Deputy Director
26 Catherine O'Neil, Assistant Director
27 John Gagne, Assistant Director
28 Maureen Catalioto, Supervisor
Department of Insurance
2910 N. 44th Street, Suite 210
Phoenix, Arizona 85018



1 3. Innovative Financial Group, Inc. ("Innovative") is a duly authorized Arizona
2 corporation currently holding a life and disability insurance agency license which
3 expires December 31, 1997. Innovative originally obtained its life and disability
4 insurance agency license from the Department on December 31, 1989. Innovative
5 previously held a variable annuity agency license which expired December 31, 1995.

6 4. At all times material to this matter, Mrs. Tyrrell was the vice-president,
7 secretary and a director of Innovative.

8 5. At all times material to this matter, Gene Tyrrell ("Mr. Tyrrell") was the
9 president and a director of Innovative. Mr. Tyrrell resigned as president of Innovative
10 on February 21, 1996 and Mrs. Tyrrell took over that position on that date.

11 6. On November 16, 1991, Mr. Tyrrell, as president of Innovative, filed an
12 application for renewal of the agency license held by Innovative (the "1991 renewal
13 application").

14 7. The 1991 renewal application required that the individual signing the
15 application as an officer, director or partner, certify under penalty of perjury that:

16 TO THE BEST OF HIS/HER KNOWLEDGE, NO PERSON NAMED
17 AS AN OFFICER, DIRECTOR, PARTNER AND/OR OWNER OR ALL
18 LICENSED INDIVIDUALS REPRESENTING INNOVATIVE AS DISCLOSED
19 IN SUBSECTION B OF THE RENEWAL APPLICATION OR ANYONE
20 DESIGNATED IN THE LICENSE, SINCE THE LAST AGENCY
21 APPLICATION OR RENEWAL THEREOF, HAS COMMITTED ANY ACT(S)
22 WHICH WOULD CONSTITUTE GROUNDS FOR DENIAL, SUSPENSION,
23 OR REVOCATION OF INSURANCE LICENSES, EXCEPT AS SET FORTH
24 IN A SEPARATE STATEMENT ACCOMPANYING THIS APPLICATION
25 AND SHALL FOR A PART HEREOF.

26 8. On May 17, 1990, the Director of the Department issued an Order in *In the*
27 *Matter of Gene Arthur Tyrrell*, Docket No. 7120, wherein Mr. Tyrrell had all of his
28 insurance licenses revoked based upon his admissions that in February, 1989 he
29 forged an insured's name on a \$20,000.00 loan request and substituted his address for
30 the insured's so that the loan check would be mailed to his address.

9. The 1991 renewal application requires an applicant to disclose acts which
occurred since the last application or renewal which would constitute grounds for denial,

1 suspension or revocation of an insurance license. The 1990 revocation of Mr. Tyrrell's
2 insurance licenses was not disclosed in the 1991 renewal application. Mr. Tyrrell's acts
3 underlying the 1990 revocation mentioned above occurred prior to December 31, 1989,
4 which was the date Innovative obtained from the Department its original insurance
5 agent license. As of November 16, 1991, the date when the 1991 renewal application
6 was submitted to the Department, Innovative was not required to disclose those acts
7 because they occurred prior to the last application .

8 10. On December 22, 1993, Mrs. Tyrrell, as an officer of Innovative, submitted
9 an application to the Department to renew Innovative's life and disability and variable
10 annuity agent license (the "1993 renewal application").

11 11. In the 1993 renewal application, Mr. Tyrrell is listed as the president of
12 Innovative.

13 12. Mrs. Tyrrell answered "No" to question C of the 1993 renewal application
14 which asked

15 SINCE APPLICANT'S LAST APPLICATION OR
16 RENEWAL THEREOF, has applicant or anyone designated
17 in the license had any professional, vocational, or business
18 license denied, suspended, revoked or restricted, or a fine
19 imposed by any public authority or withdrawn any application
20 for or surrendered any such license to avoid any disciplinary
21 action?

22 13. On April 6, 1993, an Order was issued in *In the Matter of Gene Arthur*
23 *Tyrrell*, Docket No. 8000, wherein after hearing the Director of the Department denied
24 Mr. Tyrrell's application for an insurance agent's license.

25 14. The 1993 denial of Mr. Tyrrell's application for an insurance agent's license
26 as set forth above, was not disclosed in the 1993 renewal application.

27 15. On June 9, 1993, an Opinion and Order was entered by the Arizona
28 Corporation Commission, Decision No. 58302, *In the Matter of the Salesman*
29 *Registration of: Gene Arthur Tyrrell*, CRD #1169487, revoking the salesman
30 registration of Mr. Tyrrell.

16. The revocation of the salesman registration of Mr. Tyrrell as set forth above
was not disclosed in the 1993 renewal application.

1 17. In the 1993 renewal application, information as to whether Innovative or
2 anyone designated in the license of Innovative had any professional, vocational or
3 business license denied, suspended or revoked by any public authority since the last
4 application or renewal application was required to be disclosed.

5 18. No credible evidence was presented at the hearing that Mr. Tyrrell was
6 designated in the insurance licenses of Innovative for the times material to this matter.
7 Therefore, the above mentioned revocation and denial of license with respect to Mr.
8 Tyrrell did not have to be disclosed in the 1993 renewal application.

9 19. Mrs. Tyrrell credibly testified that she did not know of the above-mentioned
10 revocations and license denial of Mr. Tyrrell until 1995 when Mr. Tyrrell informed her of
11 them. Since Mrs. Tyrrell has known Mr. Tyrrell she has never known him to hold any
12 professional license.

13 20. Mr. Tyrrell credibly testified that he did not inform Mrs. Tyrrell of the above-
14 mentioned revocations or license denial until the summer of 1995.

15 21. On December 15, 1995, Mrs. Tyrrell, as an officer of Innovative, submitted
16 an application to renew the Innovative insurance agency license (the "1995 renewal
17 application").

18 22. In the 1995 renewal application, Mr. Tyrrell is listed as the president of
19 Innovative.

20 23. The above-mentioned revocations and insurance license denial regarding
21 Mr. Tyrrel was not disclosed in the 1995 renewal application. The Department's
22 contention that such information was required to be disclosed in the 1995 renewal
23 application is not supported by the evidence. The 1995 renewal application required
24 information to be disclosed since Innovative's last application or renewal. The above-
25 mentioned revocation and license denial all took place before the 1995 renewal and
26 were not required to be disclosed in the 1995 renewal application. Further, because no
27 credible evidence was presented that Mr. Tyrrell was designated in the license, the
28 above-mentioned license revocations and license denial with respect to Mr. Tyrrell did
29 not have to be disclosed in the 1995 renewal application.
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CONCLUSIONS OF LAW

1. Respondents' conduct as set forth above in the Findings of Fact does not constitute material misrepresentations in obtaining or attempting to obtain any insurance license in violation of A.R.S. §20-316(A)(3).

2. Respondents' conduct as set forth above in the Findings of Fact does not constitute the existence of any cause for which original issuance or renewal of the Respondents' insurance licenses could have been refused within the meaning of A.R.S. §20-316(A)(1).

3. There is no credible evidence in the record to support a finding that Respondents' conduct constitutes a record of dishonesty in business or financial matters within the meaning of A.R.S. §20-316(A)(1) together with A.R.S. §20-290(B)(2).


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RECOMMENDED ORDER

Under the particular facts and circumstances of this case, the Administrative Law Judge recommends that no action be taken with respect to Laurel Lynn Tyrrell or Innovative Financial Group, Inc.

Done this day, August 21, 1996.

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LEWIS D. KOWAL
Administrative Law Judge

Copy transmitted by fax to:

John King, Director
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Department of Insurance
2910 North 44th Street, #210
Phoenix, AZ 85018-7256

1 Original transmitted by mail to:

2 John King, Director

3 ATTN: Curvey Burton

4 Department of Insurance

5 2910 North 44th Street, #210

6 Phoenix, AZ 85018-7256

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8 By



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