

STATE OF ARIZONA  
DEPARTMENT OF INSURANCE

STATE OF ARIZONA  
FILED

JAN 8 1997

DEPT. OF INSURANCE  
BY Kate

In the Matter of: )  
 ) Docket No. 96A-123-INS  
 )  
 ) ROBERT CLIFFORD KANE, )  
 ) dba PINNACLE-LOSS CLAIMS ) ORDER  
 ) REPRESENTATIVES, )  
 )  
 ) Respondent. )  
 )  
 )  
 )  
 )

On January 2, 1997, the Office of Administrative Hearings, through Administrative Law Judge Lewis D. Kowal, submitted "Recommended Decision of Administrative Law Judge" ("Recommended Decision"), a copy of which is attached and incorporated by this reference. The Director of the Arizona Department of Insurance has reviewed the Recommended Decision and enters the following order:

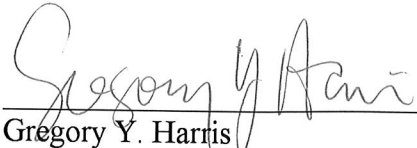
1. The recommended findings of fact and conclusions of law are adopted.
2. All insurance licenses issued by the Department to Robert Clifford Kane dba Pinnacle-Loss Claims Representatives are immediately revoked.

NOTIFICATION OF RIGHTS

The aggrieved party may request a rehearing with respect to this Order by filing a written petition with the Office of Administrative Hearings within 30 days of the date of this Order, setting forth the basis for such relief pursuant to A.A.C. R20-6-114(B).

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.

3 EFFECTIVE this 8th day of January, 1997

4  
5   
6 Gregory Y. Harris  
7 Executive Assistant Director

8 A copy of the foregoing mailed  
9 this 8<sup>th</sup> day of January, 1997

10 Charles R. Cohen, Acting Director  
11 John Gagne, Assistant Director  
12 Catherine O'Neil, Assistant Director  
13 Maureen Catalioto, Supervisor  
14 Department of Insurance  
15 2910 N. 44th Street, Suite 210  
16 Phoenix, AZ 85018

17 Office of Administrative Hearings  
18 1700 W. Washington, Suite 602  
19 Phoenix, AZ 85007

20 Kathryn Leonard  
21 Assistant Attorney General  
22 1275 W. Washington  
23 Phoenix, AZ 85012

Robert C. Kane  
Pinnacle-Loss Claims Representatives  
3006 N. 16th Street  
Phoenix, AZ 85016  
Respondent

William G. Young  
Administrator  
Adjusters Insurance School  
P.O. Box 901599  
Palm Dale, CA 93590

- 1 Robert Jackson  
Farmers Insurance  
2 18444 N. 25th Avenue  
Phoenix, AZ 85023  
3  
4 Barbara Kingdon  
Farmers Insurance  
18444 N. 25th Avenue  
5 Phoenix, AZ 85023  
6 Milton Hathaway  
Hathaway & Goering  
7 714 E. Rose Lane, Suite 200  
Phoenix, AZ 85014  
8  
9 Michael Anifant  
Republic Insurance Company  
2727 Turtle Creek Blvd.  
10 Dallas, TX 75219  
11 Priscilla Sutton  
Nationwide Insurance Company  
12 P.O. Box 29033  
Phoenix, AZ 85038-9033  
13  
14 Shawn Cunningham  
Harris & Palumbo  
361 East Coronado  
15 Phoenix, AZ 85002-3568  
16 Sean Plunkett  
American Summit Insurance Company  
17 14805 N. 73rd Street  
Scottsdale, AZ 85260-3107  
18  
19 William Westover  
David Kurtz  
O'Connor, Cavanaugh, Anderson, Westover,  
20 Killingsworth and Beshears, P.A.  
One East Camelback Road, Suite 1000  
21 Phoenix, AZ 85013

22   
23

1  
2  
3  
4  
5  
6  
7  
8  
9  
10

**IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

**ROBERT CLIFFORD KANE, dba  
PINNACLE-LOSS CLAIMS  
REPRESENTATIVES,**

**Respondent**

**No. 96A-123-INS**

**RECOMMENDED DECISION  
OF ADMINISTRATIVE  
LAW JUDGE**

11  
12  
13  
14  
15  
16  
17

HEARING: December 19, 1996

APPEARANCES: Assistant Attorney General Robert A. Zumoff on behalf of the Arizona Department of Insurance and Robert Clifford Kane on his own behalf.

ADMINISTRATIVE LAW JUDGE: Lewis D. Kowal

18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

**FINDINGS OF FACT**

1. At all times material to this matter, Respondent Robert Clifford Kane ("Mr. Kane") was and is currently licensed by the Arizona Department of Insurance ("the Department") as an insurance adjuster.

2. At all times material to this matter Mr. Kane was operating under the business name of Kane's Adjusting Service or Pinnacle-Loss Claims Representative ("Pinnacle-Loss") performing insurance adjusting services.<sup>1</sup>

3. At all times material to this matter, it is uncontroverted that Mr. Kane employed David Alan Berenter ("Mr. Berenter") as a consultant to Mr. Kane's insurance adjusting business.

4. At no time material to this matter was Mr. Berenter licensed by the Department as an insurance adjuster.

---

<sup>1</sup> Mr. Kane operated an adjusting business under the dba Kane's Adjusting Service which subsequently operated under the dba Pinnacle-Loss Claims Representatives.

Office of Administrative Hearings  
1700 West Washington, Suite 602  
Phoenix, Arizona 85007  
(602) 542-9826

1           5. On November 5, 1990, the Director of the Department entered an Order In  
2 The Matter of David Alan Berenter, Department Docket No. 7194 revoking the  
3 insurance licenses of Mr. Berenter.

4           6. Mr. Kane testified that he hired Mr. Berenter as an independent consultant to  
5 help Mr. Kane build up Mr. Kane's adjusting business. However, the evidence reflects  
6 that in at least three claims, Mr. Berenter was heavily involved in the adjustment of the  
7 claims involved.

8           7. Priscilla Sutton, an insurance claims adjuster with Nationwide Insurance  
9 ("Nationwide"), testified that in 1995, she was assigned to adjust the insurance claim of  
10 Martha Gleason. While handling that claim, Ms. Sutton was advised that Kane  
11 Adjusting Services would be representing Ms. Gleason in pursuing settlement of her  
12 claim. Initially, Ms. Sutton spoke with Mr. Kane concerning Ms. Gleason's claim but  
13 was referred by Mr. Kane to Mr. Kane's "partner", David Berenter.

14           8. During her handling of Ms. Gleason's claim, Ms. Sutton was advised that Mr.  
15 Berenter was Mr. Kane's consultant and that Mr. Kane is the adjuster. All written  
16 communication from Kane's Adjustment Services to Ms. Sutton was under Mr. Kane's  
17 signature. However, the evidence presented established that Mr. Kane had a minimal  
18 role in adjusting Ms. Gleason's claim and that Mr. Berenter took the lead role and  
19 performed services such as performing the walkthrough and scoping the loss.

20           9. Ms. Sutton testified that when she had telephone conversations with Mr.  
21 Kane, he appeared to have little knowledge of the situation and that someone was in  
22 the background providing input to Mr. Kane. According to Ms. Sutton, Mr. Berenter  
23 adjusted the claim on behalf of Kane's Adjustment Services.

24           10. Robert Jackson, a Special Claims Representative with Farmers Insurance  
25 Group ("Farmers"), was assigned to adjust an insurance claim filed by Rosalino and  
26 Hortense Quilente in 1995. Mr. Jackson testified that he received a notice of  
27 representation from Pinnacle-Loss indicating that it was representing the Quilentes on  
28 their claim. According to Mr. Jackson, most of the conversations he had with Pinnacle-  
29  
30

1 Loss were with Mr. Berenter and not Mr. Kane. During the handling of the claim, Mr.  
2 Berenter held himself out as the chief person with whom Mr. Jackson should be dealing  
3 with in adjusting the Quilente's claim.

4 11. Mr. Jackson testified that he had several meetings with Mr. Berenter, some  
5 of which were with Mr. Kane and others without Mr. Kane's presence. Mr. Berenter  
6 conducted the walkthru without Mr. Kane's involvement and Mr. Berenter conducted all  
7 of the negotiating of the claim. According to Mr. Jackson, Mr. Berenter acted hostile,  
8 was very demanding and argumentative which prolonged settlement of the claim. Mr.  
9 Jackson was never informed by Mr. Kane not to deal with Mr. Berenter. Mr. Jackson  
10 believed that both Mr. Berenter and Mr. Kane were public adjusters for Pinnacle-Loss.

11 12. Daniel Kief, an independent claims adjuster, was assigned by America  
12 Summit Insurance Company ("America" ) to adjust the claim of Laurel Welker on May  
13 31, 1995. Mr. Kief receive a notice of representation sent by Mr. Kane which stated that  
14 Kane's Adjustment Services would be representing Laurel Welker with her claim.  
15 During the handling of this claim, Mr. Kief dealt mainly with Mr. Berenter, though Mr.  
16 Kane was involved in several meetings and telephone conversations.

17 13. According to Mr. Kief, Mr. Berenter held himself out as having the authority  
18 to act on behalf of Kane's Adjusting Services and, later on, Pinnacle-Loss in adjusting  
19 the Laurel Welker's claim. Mr. Kief testified that Mr. Berenter negotiated settlement of  
20 Laurel Welker's claim.  
21

22 14. Mr. Kane credibly testified that the correspondence transmitted to the  
23 adjusters concerning the above-mentioned claims were authored by Mr. Berenter but  
24 prepared pursuant to Mr. Kane's direction and that Mr. Kane reviewed all  
25 correspondence before each item left the offices of Kane's Adjustment Services or  
26 Pinnacle-Loss.

27 15. Mr. Kane contended that he acted as the adjuster on the above-mentioned  
28 claims and that Mr. Berenter acted as his independent consultant. That contention is  
29 not supported by the evidence.  
30

1           16. Mr. Kane attempted to cloak the business arrangement between Mr. Kane  
2 and Mr. Berenter as that of an employer and an independent consultant by using  
3 separate business cards with different business names and making representations  
4 that refer to Mr. Kane and not Mr. Berenter as the adjuster. In actuality, the way  
5 business was conducted at Kane's Adjustment Company and Pinnacle-Loss was that  
6 Mr. Berenter acted as the adjuster on the above-mentioned claims for compensation  
7 and took the lead role in scoping the losses and negotiating settlement of those claims.  
8 Mr. Kane's actual involvement in those claims was minimal. The evidence presented  
9 established that Mr. Berenter was adjusting the claims using Mr. Kane's Arizona  
10 insurance adjuster's license with the knowledge and consent of Mr. Kane.  
11

12           17. Mr. Kane's contention that the above-named adjusters who testified for the  
13 Department were not truthful and that the insurance companies that they work or  
14 worked for at the times material to this matter want public adjusters out of business was  
15 not supported by the evidence. It is determined that Messrs. Jackson and Kief and Ms.  
16 Sutton were sincere witnesses and that their testimony as set forth above was credible.  
17

18           18. In conjunction with the renewal of Mr. Kane's insurance adjuster's license,  
19 Mr. Kane submitted a letter dated December 3, 1993 in response to a written inquiry  
20 from the Department dated November 9, 1993 which requested "written proof of being  
21 a full-time , salaried employee of a licensed adjuster or a graduate of a recognized law  
22 school, or having had experience ( at least six months with a licensed adjuster) or  
23 special training or eduction (sic) in the handling of loss claims under insurance  
24 contracts". In the December 3, 1993 letter, Mr. Kane represented that he and his son  
25 were taking a study course and stated that their average was "pretty good". Attached to  
26 that letter was a copy of a letter from the Adjusters Insurance School dated October 3,  
27 1993 which stated that Robert Kane, whose address was 5155 Luigi Terrace, #6, San  
28 Diego, California 92122, had an overall grade point average of 93.3 through lesson  
29 #36 of the course.  
30

1 19. William Young, the administrator of the Adjusters Insurance School, ("the  
2 School") credibly testified that Robert Kane, the Respondent, had never enrolled at  
3 the School<sup>2</sup> and that the October 3, 1993 letter from the School referred to the  
4 Respondent's son Robert Kane, who had enrolled at the School.

5 20. At the hearing, Mr. Kane contended that he made a mistake by stating to the  
6 Department that he had attended the School. Mr. Kane credibly testified that although  
7 he had not enrolled in the School, he had obtained the School's materials and that he  
8 had taken and graded the exams at the end of each lesson of the course materials.  
9 However, Mr. Kane admitted under cross-examination that he represented to the  
10 Department that he had taken the School's course and received a good grade in order  
11 to impress the Department.

12 21. In mitigation, Mr. Kane testified that Mr. Berenter is no longer employed or  
13 associated with Pinnacle-Loss.

14 22. The Department submitted an Affidavit of Barbara Kingdon in support of the  
15 allegation that Mr. Berenter acted as an adjuster for the Respondent on the claim of  
16 loss submitted to Farmers by Richard and Juanita Rodrigues. Little weight was given to  
17 the Affidavit as Ms. Kingdon did not appear at the hearing and Mr. Kane did not have  
18 an opportunity to cross-examine Ms. Kingdon. Mr. Kane's testimony refuted the  
19 Affidavit of Ms. Kingdon. Therefore, the evidence did not support the allegation.

20 23. Most of the evidence submitted by Mr. Kane were conclusory statements  
21 unsupported by documentary evidence in the record and, thus, were given little weight.

### 22 CONCLUSIONS OF LAW

23 1. Mr. Kane received notice of this proceeding as prescribed by A.R.S. § §20-  
24 163 and 41-1061.

25  
26  
27  
28 <sup>2</sup> The school is a correspondence school with materials sent to enrollees to study materials on their own  
29 time. Mr. Young credibly testified that enrollees arrange to take a final exam graded by the School. The  
30 enrollees must pass that examination in order to receive a certificate showing completion of the School's  
course.



1 2. The Director of the Department has jurisdiction over this matter pursuant to  
2 A.R.S. §20-142 and 20-290.

3 3. Respondent's conduct as set forth above in the Findings of Fact constitutes a  
4 conduct of affairs under the Respondent's insurance license showing the Respondent  
5 to be a source of injury and loss to, or repeated complaint by, the public or any insurer  
6 within the meaning of A.R.S §20-316(A)(7).

7 4. Respondent's conduct as set forth above in the Findings of Fact constitutes  
8 the existence of misrepresentation or fraud in obtaining or attempting to obtain any  
9 insurance license in violation of A.R.S. §20-316(A)(3).

10 5. Respondent's conduct as set forth above in the Findings of Fact constitutes  
11 a wilful misrepresentation of any fact required to be disclosed in an application or  
12 accompanying statement within the meaning of A.R.S. §20-291(G).

13 6. Respondent's conduct as set forth above in the Findings of Fact, constitutes  
14 the wilful violation of, or wilful noncompliance with, any provision of this title, or any  
15 lawful rule, regulation or order of the Director of the Department in violation of A.R.S.  
16 §20-316(A)(2).

17 7. Respondent's conduct as set forth above in the Findings of Fact, constitutes  
18 the existence of any cause for which original issuance or any renewal of insurance  
19 licenses could have been refused within the meaning of A.R.S. §20-316(A)(1) together  
20 with A.R.S. §20-312(C).

21 8. Based upon the Respondent's conduct as set forth above in the Findings of  
22 Fact, the Director of the Department has the authority to suspend, revoke or refuse to  
23 renew Respondent's insurance licenses or impose a civil penalty upon the Respondent  
24 pursuant to A.R.S. §§20-316(A) and 20-316(C).


25 **RECOMMENDED ORDER**

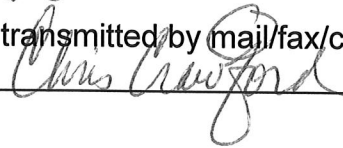
26 Based on the above, the Administrative Law Judge recommends that all  
27 insurance licenses issued by the Department to Robert Clifford Kane dba Pinnacle-Loss  
28  
29  
30

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

Claims Representatives be immediately revoked.

Done this day, January 2, 1997.

  
\_\_\_\_\_  
Lewis D. Kowal  
Administrative Law Judge

*Original*  
Copy transmitted by mail/fax/certified  
by ; to:

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