

MAR 20 1997

STATE OF ARIZONA  
DEPARTMENT OF INSURANCE

DEPT. OF INSURANCE  
BY [Signature]

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

In the Matter of:	)	Docket No. 96A-211-INS
	)	
KATHRAN JONANA MARTIN	)	<b>ORDER</b>
	)	
Respondent.	)	
	)	
	)	

On February 18, 1997, the Office of Administration, through Administrative Law Judge Richard N. Blair, submitted "Recommended Decision of Administrative Law Judge" (the "Recommended Decision"), a copy of which is attached and incorporated by this reference. Pursuant to A.R.S. §41-1092.08(B), the Director of the Arizona Department of Insurance declines to review the Recommended Decision. Therefore, pursuant to A.R.S. §41-1092.08(D)(1), the Recommended Decision is the final administrative decision.

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).

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 of

.....  
.....  
.....

1 Administrative Hearings of the appeal within ten days after filing the complaint commencing the appeal,  
2 pursuant to A.R.S. §41-1092.10.

3 DATED this 20 day of March, 1997.

4  
5   
6 John A. Greene  
7 Director of Insurance

8 A copy of the foregoing mailed  
9 this 20th day of March, 1997

10 Office of Administrative Hearings  
11 1700 West Washington, Suite 602  
12 Phoenix, AZ 85007

13 Charles R. Cohen, Deputy Director  
14 John Gagne, Assistant Director  
15 Catherine O'Neil, Assistant Director  
16 M. Ellen Miller, Investigator  
17 Maureen Catalioto, Supervisor  
18 Department of Insurance  
19 2910 N. 44th Street, Suite 210  
20 Phoenix, AZ 85018

21 Gerrie L. Marks  
22 Assistant Attorney General  
23 1275 West Washington  
Phoenix, AZ 85007

Kathran Jonana Martin  
10027 Silvertree  
Dallas, TX 75243

Kathran Jonana Martin  
10020 Audelia Road, #C109  
Dallas, TX 75243

1 Inter-State Assurance Company  
P.O. Box 1907  
2 Des Moines, IA 50306

3 Western National Life Insurance Company of Texas  
One Moody Plaza  
4 Galveston, TX 77550-7999

5 Great American Life Insurance Company  
P.O. Box 5420  
6 Cincinnati, OH 45201-5420

7

8

*Rosemary Pedilla*

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23



1 4. Ms. Martin answered "NO" to Question 8(C) of the 1992 Application,  
2 which asks: "SINCE YOUR LAST APPLICATION OR RENEWAL, have you had any  
3 professional, vocational or business license, denied, suspended, revoked or restricted,  
4 or a fine imposed by any public authority, or withdrawn any application for or  
5 surrendered any such license to avoid disciplinary action?" (Emphasis added)

6 5. The evidence is undisputed that on May 30, 1991, the Commissioner of  
7 the Texas State Board of Insurance<sup>1</sup> entered an Order in Disciplinary Action. Docket  
8 No. C91-191, Official Order No. 91-0806 ("Order No. 91-0806") wherein Ms. Martin was  
9 ordered to cease and desist from engaging in certain specified conduct. The Texas  
10 Order further required Ms. Martin to pay a "monetary forfeiture" of \$7,500.00 to the  
11 Texas State Board of Insurance in lieu of cancellation or revocation of Ms. Martin's life  
12 insurance and variable contract agent license. Ms Martin paid that monetary forfeiture  
13 within the time specified in Order No. 91-0806.

14 6. The Department contended that Ms. Martin was required to answer "YES"  
15 to Question 8(C) of the 1992 Application because Ms. Martin was fined \$7,500.00 by  
16 the Texas State Board of Insurance in Order No. 91-0806 and was at risk for losing her  
17 Texas insurance agent license pursuant to the terms of that Order.

18 7. Harland "Ike" Harris, an attorney in Austin, Texas, credibly testified that he  
19 represented Ms. Martin and her husband in negotiating a consent agreement with the  
20 Texas Board of Insurance, which resulted in Order No. 91-0806. Mr. Harris was a  
21 Texas State Senator from 1967 to 1992, and was chairman of the Senate legislative  
22 committee which reviewed the Texas insurance laws. Mr. Harris testified that he is  
23 knowledgeable of the Texas insurance laws and has maintained an active practice  
24 representing clients in administrative matters before the Texas Board of Insurance.

25 8. Mr. Harris credibly testified that at the time Order No. 91-0806 was  
26 entered the Texas Board of Insurance had no authority under Texas law to assess a  
27 civil penalty or a fine. According to Mr. Harris, pursuant to Texas law the \$7,500.00  
28

---

29 <sup>1</sup> At some time subsequent to 1991, the Texas State Board of Insurance was re-named  
30 the Texas Department of Insurance.

1 monetary forfeiture paid by Ms. Martin to the Texas Board of Insurance was not a fine.  
2 Mr. Harris further testified that Ms. Martin consulted with him to determine how the  
3 payment of the monetary forfeiture may effect her license in other states and Mr. Harris  
4 advised Ms. Martin that the monetary forfeiture was not a fine.

5 9. Hector DeLeon, an attorney in Austin, Texas, credibly testified that he was  
6 retained by Ms. Martin in the fall of 1991 to contact the Texas Department of Insurance  
7 regarding an application pending for the issuance of a corporate insurance license to  
8 AFS. Mr. DeLeon served as general counsel for the Texas State Board of Insurance  
9 from 1974 through June 1977, teaches insurance regulation at a Texas law school,  
10 and represents clients before the Texas Department of Insurance in regulatory matters.  
11 Mr. DeLeon concurred with Mr. Harris that the Texas Department of Insurance had no  
12 authority in 1991 to issue a fine or penal sanction. At that time the Texas insurance  
13 code provided a party with the option of choosing between disciplinary action against  
14 their license or the payment of a monetary forfeiture. Mr. DeLeon could not recall if Ms.  
15 Martin consulted with him concerning question 8(C) of the 1992 Application.

16 10. In Mr. DeLeon's opinion neither the consent agreement entered into by  
17 Ms. Martin nor Order No. 91-0806 in any way resulted in a denial, suspension,  
18 restriction, withdrawal of or surrender of Ms. Martin's Texas insurance license.  
19 Mr. DeLeon was a credible witness.

20 11. Based upon the credible testimony of Mr. Harris and Mr. DeLeon  
21 concerning Order No. 91-0806, it is determined that the \$7,500.00 monetary forfeiture  
22 paid by Ms. Martin to the Texas Board of Insurance in 1991 was not a fine. It is also  
23 determined that Ms. Martin's license was not restricted in any way as a result of Order  
24 No. 91-0806. Accordingly, Ms. Martin was not required to disclose Order No. 91-0806,  
25 or the \$7,500.00 monetary forfeiture paid to the Texas State Board of Insurance, in  
26 response to Question 8(C) of the 1992 Application.

27 12. On March 8, 1995, Ms. Martin submitted an Application for Insurance  
28 License Renewal (the "1995 Application") to the Department for Ms. Martin's non-  
29 resident life and disability insurance agent license .  
30

1           13. Ms. Martin answered "YES" to Question D of the 1995 Application ,which  
2 asks: "SINCE YOUR LAST APPLICATION OR RENEWAL, have you had any  
3 professional, vocational or business license, refused, denied, suspended, revoked or  
4 restricted, or have you withdrawn any application for or surrendered any license to  
5 avoid any such action?"

6           14. On March 8, 1995, the Department issued Ms. Martin a non-resident life  
7 and disability insurance agent license.

8           15. The evidence is undisputed that on March 16, 1993, Ms. Martin submitted  
9 an Insurance Agent License Application to Wisconsin's Commissioner of Insurance  
10 (the "Wisconsin Application"). Ms. Martin disclosed on the Wisconsin Application that  
11 she had been the subject of an administrative action in Texas which resulted in  
12 issuance of Order No. 91-0806.

13           16. The Wisconsin Commissioner of Insurance denied Ms. Martin's Wisconsin  
14 Application on June 17, 1993.<sup>2</sup>

15           17. The Department contended that in response to Question D of the 1995  
16 Application Ms. Martin submitted documentation pertaining to Order No. 91-0806 issued  
17 by the Texas Board of Insurance on May 30, 1991, but failed to specifically disclose  
18 that the State of Wisconsin had denied Ms. Martin's Wisconsin Application for a non-  
19 resident insurance agent license on June 17, 1993. Accordingly, the Department  
20 contended that Ms. Martin's failure to disclose the denial of the Wisconsin Application  
21 constituted misrepresentation or fraud in obtaining an Arizona insurance license.

22           18. The Department also contended that Ms. Martin intended to disclose the  
23 1991 Texas administrative action by answering "YES" to Question D of the 1995  
24 Application and that Ms. Martin never intended to disclose the 1993 denial of the  
25 Wisconsin Application. According to the Department, Ms. Martin submitted an  
26 explanatory letter and supporting documentation concerning the 1991 Texas  
27

---

28 <sup>2</sup> On April 21, 1995, the Wisconsin Commissioner of Insurance notified Ms. Martin that  
29 the June 17, 1993 denial had been revised to show the correct citation to the Wisconsin  
30 Administrative Code for the grounds of the denial.

1 administrative action with the 1995 Application, but Ms. Martin failed to submit either an  
2 explanatory statement or a copy of the June 17, 1993 denial letter issued by the  
3 Wisconsin Commissioner of Insurance. To support its contention the Department relied  
4 on the Department's licensing records and submitted Exhibit 3, which the Department  
5 contended was the entire 1995 Application submitted by Ms. Martin to the Department.

6 19. It is undisputed that Exhibit 3, as submitted at the hearing by the  
7 Department, did not contain either an explanatory statement concerning the denial of  
8 the Wisconsin Application or a copy of the denial letter issued on June 17, 1993, by the  
9 State of Wisconsin.

10 20. Ms. Martin credibly testified that after reviewing the 1995 Application, she  
11 answered "YES" to Question D because since the time of the 1992 Application the  
12 State of Wisconsin had denied her Wisconsin Application for a non-resident's insurance  
13 agent license. Ms. Martin contended that the action taken by the Texas Board of  
14 Insurance in 1991, which resulted in Order No. 91-0806, was not required to be  
15 disclosed to the Department in response to Question D on the 1995 Application. That  
16 contention is supported by the evidence.

17 21. Ms. Martin credibly testified at the time of completing the 1995  
18 Application she instructed Barbara Wyatt ("Ms. Wyatt"), the vice-president of operations  
19 for AFS, to attach the June 17, 1993 Wisconsin denial letter and documentation  
20 regarding the 1991 Texas administrative action (the "Texas Package") to the 1995  
21 Application. The Texas Package consisted of Order No. 91-0806, the Affidavit of Ike  
22 Harris, a Letter of License Certification from the Texas Department of Insurance, and an  
23 explanatory letter from Ms. Martin concerning the 1991 Texas administrative action.

24 22. Ms. Wyatt testified that at all times relevant to this matter a function of her  
25 job was to review and complete license renewal applications received from other states  
26 where Ms. Martin held a non-resident insurance license. Ms. Wyatt credibly testified  
27 that it was and is normal business practice for Ms. Wyatt to attach the Wisconsin denial  
28 letter to each renewal application which asks if a license had been denied, together with  
29 the Texas Package. The Texas Package was routinely included because the  
30



1 Wisconsin denial was based upon the 1991 Texas administrative action. Although Ms.  
2 Wyatt had no independent recollection of which documents were attached to the 1995  
3 Application sent to the Department, Ms. Wyatt recalled the 1995 Application and  
4 believed that she followed the normal business practices of enclosing the Wisconsin  
5 denial and the Texas Package. Ms. Wyatt was a credible witness.

6 23. Ms. Martin contended that the 1993 denial letter from the State of  
7 Wisconsin was provided to the Department with the 1995 Application and that the 1995  
8 Application submitted by the Department at the hearing is not a true and correct copy of  
9 the 1995 Application which she submitted. Ms. Martin presented credible and  
10 unrefuted testimony that Ms. Martin never submitted to the Department Order No. 91-  
11 0776, the Cease and Desist Order, which was issued by the Texas Commissioner of  
12 Insurance on May 17, 1991. According to Ms. Martin the Cease and Desist Order was  
13 not part of the Texas Package because Order No. 91-0806, which was provided to the  
14 Department, abated Order No. 91-0776. Ms. Martin further testified that Exhibit 3  
15 included an Affidavit of Charles "Chuck" Bryson, which was attached to a document  
16 entitled Staff's Application For Cease And Desist Order. Ms. Martin credibly testified  
17 that Mr. Bryson's Affidavit was never submitted as part of the 1995 Application and  
18 that neither Mr. Bryson's Affidavit nor the Staff's Application has ever been included in  
19 the Texas Package. That testimony was corroborated by Ms. Wyatt.

20 24. The evidence established that on August 15, 1995, the Department  
21 requested from the Texas Department of Insurance a certified copy of the cease and  
22 desist order in Docket No. 91-191.

23 25. Ms. Martin's testimony regarding the documentation which was submitted  
24 to the Department was not refuted by any testimony from the Department concerning  
25 the accuracy of the Department's licensing record. Additionally, Ms. Martin's testimony  
26 that she did not submit certain documents pertaining to the Cease and Desist Order is  
27 corroborated by the fact that the Department requested that same documentation from  
28 the Texas Department of Insurance. Further, the Department did not present any  
29 corroborating evidence to establish that Exhibit 3 constitutes a true and accurate copy  
30

1 of the 1995 Application and attachments which Ms. Martin filed with the Department in  
2 1995. Accordingly, the totality of the facts and circumstances casts considerable doubt  
3 as to whether Exhibit 3 was an accurate copy of the 1995 Application submitted by Ms.  
4 Martin.

5 26. Based on the totality of the circumstances, the Department has not  
6 sustained its burden of proof . The Department has failed to prove by a preponderance  
7 of the evidence that Ms. Martin failed to disclose the 1993 denial of the Wisconsin  
8 Application on her 1995 Application.

9 **CONCLUSIONS OF LAW**

10 1. The Director has jurisdiction over this matter pursuant to A.R.S. § 20-161.

11 2. There is insufficient evidence in the record to find that Ms. Martin conduct  
12 as set forth in the Findings of Fact constitutes a willful violation of, or willful  
13 noncompliance with, any provisions of this title, or any lawful rule, regulation or order of  
14 the director in violation of A.R.S. § 20-316(A)(2).

15 3. There is insufficient evidence in the record to find that Ms. Martin conduct  
16 as set forth in the Findings of Fact constitutes the existence of misrepresentation or  
17 fraud in obtaining or attempting to obtain any insurance license in violation of A.R.S. §  
18 20-316(A)(3).

19 4. Based on the above Findings of Fact, the Director does not have the  
20 authority to suspend, revoke, or refuse to renew Ms. Martin's non-resident insurance or  
21 impose a civil penalty upon Ms. Martin, pursuant to A.R.S. § 20-316(A) and 20-316(C).

22 . . .  
23 . . .  
24 . . .  
25 . . .  
26 . . .  
27 . . .  
28 . . .  
29 . . .  
30 . . .

**RECOMMENDED ORDER**

Based on the foregoing, it is recommended that no disciplinary action be taken against the non-resident insurance agent license of Kathran Jonana Martin.

Done this day, February 18, 1997.



---

Richard N. Blair  
Administrative Law Judge

Original transmitted by mail this  
18 day of February, 1997, to:

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

By 