

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

STATE OF ARIZONA
FILED

AUG 15 1996

DEPT. OF INSURANCE
BY KHL.

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3 In the Matter of:) Docket No. 96A-8649-INS
4 MICHAEL STEVEN BROWN)
5 dba DESIGN INSURANCE) ORDER
6 SERVICES,)
Respondent)

7 On July 31, 1996, the Office of Administrative Hearings, through Administrative Law Judge
8 Lewis D. Kowal, submitted "Recommended Decision of Administrative Law Judge" (the "Recommended
9 Decision"), a copy of which is attached and incorporated by this reference. A copy of the May 9, 1995
10 Order (the "May 9 Order") is also attached and incorporated by this reference. The Director of the
11 Arizona Department of Insurance has reviewed the Recommended Decision of Administrative Law
12 Judge, and enters the following order:

- 13 1. The Director accepts and responds by this reference the May 9, 1995 Order entered in
14 this matter.
- 15 2. The Director adopts proposed findings of fact paragraphs 1 through 22 and 26 through 31
16 from the Recommended Decision.
- 17 3. The Director rejects proposed findings of fact paragraphs 23, 24 and 25, the proposed
18 conclusion of law and the recommended order from the Recommended Decision.
- 19 4. The Director substitutes the following paragraphs in the place of findings of fact
20 paragraphs 23, 24, and 25 and adopts the additional findings of fact numbered as paragraphs 32 through
21 37.
- 22 5. The Director adopts conclusions of law paragraphs 1 through 11 set forth below.
- 23 6. The Director adopts the Order set forth below.

1 The entire Order, consisting of all adopted findings of fact, conclusions of law, and order are set
2 forth in their entirety below, including findings adopted from the May 9 Order and the Recommended
3 Decision.

4 1. On October 2, 1992, Mr. Brown filed an application for a property and casualty insurance
5 agent license with the Department which was subsequently issued to Mr. Brown. On April 13, 1994, Mr.
6 Brown filed an application to renew that license.

7 2. On January 19, 1993, Mr. Brown filed an application for a life and disability insurance
8 agent license with the Department which was subsequently issued to Mr. Brown. On April 26, 1993, Mr.
9 Brown filed an application to renew that license.

10 3. In the above-mentioned license and renewal applications, Mr. Brown was required to
11 disclose prior revocations and did not disclose any.

12 4. In the 1995 hearing In the Matter of Michael Steven Brown dba Design Insurance
13 Services, ("Docket No. 8649") before the Department, Michael Steven Brown ("Mr. Brown") was
14 determined to have had a record of misappropriation or conversion of monies belonging to policyholders,
15 a record of suspension or revocation of an insurance license and to have materially misrepresented or
16 committed fraud in the application for or attempt to obtain any insurance license.

17 5. In Docket No. 8649, the Director issued an Order which revoked insurance license
18 number 11098 issued to Mr. Brown dba Design Insurance Services.

19 6. Mr. Brown requested a rehearing in Docket No. 8649 which was denied and appealed the
20 Director's Order to Superior Court in Case No. CV95-12626.

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1 7. In Docket No. 8649, Mr. Brown asserted that he was not made aware of the 1985
2 revocation of an insurance license that had previously been issued to him by the Department and had not
3 received the Notice of Hearing concerning that matter.

4 8. In Docket No. 8649, the Department contended that the Notice of Hearing, Order and
5 Amended Order which revoked the insurance license held by Mr. Brown in 1985 ("the previous license")
6 was properly served upon Mr. Brown at his last known address of record.

7 9. The issue for consideration at the supplemental hearing on remand is whether Mr. Brown
8 received the requisite procedural due process at the 1985 hearing of In the Matter of Michael Steven
9 Brown, Jr., Docket No. 5887 ("Docket No. 5887).

10 10. The evidence of record established that the Department does not possess the 1985 hearing
11 file of Docket No. 5887 or the 1985 licensing file of Mr. Brown.

12 11. On August 23, 1983, Mr. Brown reported his address to the Department in his application
13 to renew the life and disability agent license issued under the previous license as being: P.O. Box 26306,
14 Phoenix, AZ 85068.

15 12. On April 24, 1984, Mr. Brown reported his address to the Department in his application
16 to renew the previous license as being: P.O. Box 26306, Phoenix, AZ 85260. That address was
17 incorrect in that the zip code was stated as 85260 when the correct zip code was 85068. The zip code of
18 85260 is not a Phoenix zip code but a Scottsdale zip code and the post office box utilized by Mr. Brown
19 at that time was located in Phoenix not Scottsdale.

20 13. There is no merit to Mr. Brown's contention that the address which the Department
21 mailed the Notice of Hearing, Order and Amended Order in Docket No. 5887 was an incorrect address.

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1 14. At the address mentioned above in paragraph 11, on December 11, 1985, the Director
2 issued and served upon Mr. Brown an Order in Docket No. 5887 ("the Order) and on December 12,
3 1985 the Director issued and served upon Mr. Brown an Amended Order ("the Amended Order") in
4 which the Director determined that Mr. Brown had committed the violations set forth below in paragraph
5 15 and the previous license was revoked effective December 20, 1985.

6 15. The Notice of Hearing issued on September 13, 1985 regarding revocation of the previous
7 license ("the Notice of Hearing") alleged in two separate charges that Mr. Brown misappropriated,
8 converted or withheld premiums received or during the conduct of business under the insurance license
9 or through its use.

10 16. The hearing of Docket No. 5887 was held on October 17, 1985 and Mr. Brown did not
11 appear at that hearing.

12 17. Department Investigator Arnold Sniegowski testified at the hearing in Docket No. 8649
13 that the Department's records reflected that the Order, Amended Order and the Notice of Hearing had
14 been served upon Mr. Brown at the address of record and that there was no evidence in the Department's
15 records that those documents were not delivered to Mr. Brown and returned to the Department.

16 18. The evidence presented established that the post office box set forth above in paragraph
17 11 was opened in February, 1979 and that sometime between February, 1979 and 1989 Mr. Brown's
18 name was added so that he could receive mail at that post office box. Mr. Brown received mail at the
19 post office box between 1979 and 1989.

20 19. Mr. Laba testified at the supplemental hearing that other than opening the post office box
21 set forth above in paragraph 11 Mr. Laba had nothing further to do with that post office box and did not
22 retrieve or receive any mail or notices sent to that post office box.

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1 20. Once the post office box referred to above in paragraph 11 was opened, Mr. Laba turned
2 over the keys to that post office box to Mr. Brown's father.

3 21. It is uncontroverted that from April, 1984 until May 30, 1985, Mr. Laba had no verbal or
4 written contact with Mr. Brown.

5 22. It is uncontroverted that Mr. Brown notified the Department in a letter dated April 27,
6 1984, Exhibit A admitted in Docket No. 8649, that as of that date Mr. Brown's address was being
7 changed. The letter stated that for the next 90 days Mr. Brown's address would be 805 W. St. Johns,
8 Phoenix, AZ 85023 ("the St. Johns address"). The letter also stated that Mr. Brown was surrendering
9 the previous license. There is no evidence in the record that the Department accepted Mr. Brown's
10 surrender of the previous license.

11 23. Mr. Brown's letter conclusively establishes that after 90 days following April 27, 1984,
12 Mr. Brown's address of record ceased to be the St. Johns Street address.

13 24. Mr. Brown's letter did not notify the Department of a permanent change of
14 address; it notified the Department of a temporary change of address. By its terms, the letter
15 applied only for the 90 days following April 27, 1984. On July 26, 1984, Mr. Brown's address
16 of record reverted to the P.O. Box address identified above in ¶11. A.R.S. § 20-313.

17 25. Mr. Brown never communicated with the Department to countermand his express
18 instruction in the April 24, 1994 letter that the St. Johns Street address would only be valid for 90 days.
19 The record established that the Department served the notice of hearing, order, and the amended order to
20 the address of record for Mr. Brown maintained by the Director at the Department of Insurance. Having
21 served Mr. Brown at the address of record that Mr. Brown had filed with the Department, Mr. Brown
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1 cannot now be heard to complain about whether he actually received the notice of hearing, order, or
2 amended order.

3 26. In a letter dated February 26, 1985, Assistant Attorney General Susan Gallinger wrote to
4 Maureen Catalioto, Licensing Supervisor of the Department, that the Department and the Attorney
5 General's Office had been unable to contact Mr. Brown for the past several months. This letter does not
6 indicate the means or locations that were utilized in attempts made to communicate with Mr. Brown.
7 Under the circumstances, this letter was not considered relevant.

8 27. Chris Crawford, formerly an administrative secretary with the Department from 1985
9 through January 1990 and a legal secretary with the Department from February 1990 through December
10 1995, testified as to the records retention policy of the Department. Ms. Crawford testified that from
11 April 1991 to September 1992 hearing files were retained by the Department for one year. The records
12 were then transferred and retained by the Records Retention Center for four years after which time the
13 records were destroyed. Ms. Crawford further testified that from September 4, 1992 through December
14 1995, the hearing files were retained by the Department for two years. The significant case files were
15 then transferred and maintained by the Records Retention Center for four years after which time the
16 records were destroyed. Default cases were determined not to be significant case files.

17 28. Ms. Crawford testified that during her tenure as a legal secretary with the Department she
18 did not see any 1985 hearing files and, to her knowledge, those files do not exist.

19 29. Ms. Crawford testified that the procedures set forth above in paragraph 27 also applied to
20 the licensing files of the Department. Ms. Crawford also testified that any return mail such as a returned
21 Notice of Hearing would have been maintained in the Department's hearing file.

1 30. Ms. Crawford's testimony as set further above in paragraphs 27, 28 and 29 is determined
2 to be credible.

3 31. Pursuant to Judge Gottsfield's January 12, 1996 Order in Case No. CV95-12626, Mr.
4 Brown's check made payable to & Holt [sic] and the accompanying statement (Exhibit 3C of the
5 supplemental hearing) were considered by the undersigned Administrative Law Judge. Those documents
6 indicate Mr. Brown's state of mind in that based upon those documents, Mr. Brown believed that he had
7 a defense to the allegations set forth in the Notice of Hearing and had no reason not to appear at the 1985
8 proceeding of Docket No. 5887.

9 32. While Mr. Brown may have presented evidence in the current proceedings that suggests
10 the existence of a defense to the misconduct that resulted in the revocation that Mr. Brown failed to
11 reveal in the applications that gave rise to this proceeding, the existence of a possible defense does not
12 serve as a basis to permit Mr. Brown at this late date to reopen and relitigate a proceeding that has been
13 concluded and for which he received the notice he was entitled to receive by law. As stated in the May 9
14 Order:

15 Mr. Brown had the opportunity to answer and defend himself against the
16 allegations brought in Docket No. 5887. The current proceeding before the Director is
17 not the appropriate forum for Mr. Brown to attack and relitigate the issues previously
18 resolved against him, and which Mr. Brown had the opportunity and incentive to refute.
19 The purpose of this proceeding instead focused upon the manner in which the Director
20 should exercise his discretion regarding the License, given the revocation of the Previous
21 License, the facts underlying the revocation, and Mr. Brown's failure to reveal the
22 revocation in the applications submitted to receive the License.

23 May 9 Order, ¶22.

 33. The Legislature vested the Director with the discretion to determine the qualifications of
an applicant for the issuance of an insurance license or for a licensee to maintain an insurance license.

1 A.R.S. §20-290(B); see A.R.S. §§20-316(A), 20-316(C) (authorizing the Director to suspend or revoke
2 a license or to impose civil penalties against the holder of an insurance license for violations of Title 20).

3 34. For the Director to exercise this discretion, applicants for the issuance of a license must
4 submit an application to the Director. A.R.S. §20-291. When reviewing an application, the Director
5 must consider:

6 a. Whether the applicant meets the qualifications prescribed by the
7 Legislature for the issuance of the license.

8 b. The applicant's identity, personal history, business record, experience in
9 insurance, the purpose for which the license is to be used, and "other pertinent facts the
10 Director requires." A.R.S. §20-291(A).

11 c. Whether the applicant has been previously licensed to transact any kind of
12 insurance in this state or elsewhere. A.R.S. §20-291(B)(1).

13 d. Whether the applicant has previously had a license refused, suspended or
14 revoked. A.R.S. §20-291(B)(2)

15 35. After considering these factors, the Director may refuse to accept an application or refuse
16 to issue a license if these or other factors exist that draw into question the applicant's qualifications for
17 license, including a material misrepresentation or fraud in the application for, or attempt to obtain an
18 insurance license. A.R.S. §20-290(B)(1); see A.R.S. §20-316(A)(3).

19 36. Applicants for the issuance of an insurance license must truthfully, fully, and adequately
20 disclose information on a license application. A.R.S. §20-316(A)(2). If an applicant for the issuance of
21 an insurance license fails to disclose background information which falls within the scope of A.R.S. §20-
22 290(B), 20-291(A) and 20-291(B), the nondisclosure serves to hamper, thwart, or prevent the Director

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1 from the exercise and discharge of the duty delegated by the Legislature. Mr. Brown's failure to fully and
2 truthfully reveal any information about the revocation of the Previous License when he applied for the
3 License raises the question whether he can be expected to be honest in transactions entered into under the
4 License.

5 37. The revocation order in Docket No. 5887, stemming from the finding that Mr. Brown had
6 misappropriated premium, constitutes a material fact relevant to the Director's exercise of discretion in
7 the issuance of licenses. Mr. Brown had an absolute obligation to disclose the revocation and the
8 violation of Title 20 that led to the revocation order.

9 CONCLUSIONS OF LAW

10 1. Mr. Brown received notice of this proceeding as prescribed by A.R.S. §§20-163 and 41-
11 1061.

12 2. The Director has jurisdiction over this matter pursuant to A.R.S. §20-142.

13 3. A licensee's address or record constitutes the address through which the Department
14 maintains contact with the licensee. The Department has the right to rely on the accuracy of the address
15 information that the licensee provides. A licensee has the responsibility to inform the Director of address
16 changes. A.R.S. §20-313. Notice mailed to a licensee's address of record constitutes complete service.

17 4. "Upon suspension or revocation of any license the Director shall forthwith serve notice
18 thereof upon the licensee either in person or by mail addressed to the licensee as address last of record
19 with the Director. Notice by mail shall be deemed effectuated when so mailed." A.R.S. §20-317.

20 5. The last address of record Mr. Brown had on file and in effect when the Director issued
21 the notice of hearing, and served the Order and Amended Order in Docket No. 5887 was P.O. Box
22 26306, Phoenix, AZ 85068. A.R.S. §§20-313 and 20-317. As a matter of law, the change of address
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1 referred to in Mr. Brown's April 24, 1984 letter had, by its own terms, expired when the Director issued
2 and served these documents. The Director was therefore entitled to and required to rely upon Mr.
3 Brown's permanently established P.O. Box address.

4 6. As a matter of law, Michael Steven Brown was given the requisite procedural due process
5 in the 1985 proceeding.

6 7. Mr. Brown's conduct constitutes a material misrepresentation or fraud in the application
7 for, or attempt to obtain any insurance license, within the meaning of A.R.S. §20-290(B)(1).

8 8. Mr. Brown has a record of misappropriation or conversion of monies belonging to
9 policyholders, within the meaning of A.R.S. §20-290(B)(3).

10 9. Mr. Brown has a record of suspension or revocation of an insurance license in any
11 jurisdiction, within the meaning of A.R.S. §20-290(B)(5).

12 10. Mr. Brown's conduct constitutes the existence of any cause for which original issuance or
13 any renewal of an insurance license could have been refused such that Mr. Brown's licenses may be
14 suspended or revoked pursuant to A.R.S. §20-316(A)(1), together with A.R.S. §§290(B)(1) and 20-
15 290(B)(5).


16 11. Mr. Brown's conduct constitutes the existence of misrepresentation or fraud in obtaining
17 or attempting to obtain an insurance license, in violation of A.R.S. §20-316(A)(3).

18 12. Mr. Brown has a record of suspension or revocation of an insurance license in any
19 jurisdiction, in violation of A.R.S. §20-316(A)(5).

1 **ORDER**

2 IT IS ORDERED revoking insurance license number 11098 issued to Respondent Michael Steven
3 Brown, dba Design Insurance Services.

4 DATED this 15th day of August, 1996.

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6 
7 John King
8 Director of Insurance

9 **NOTIFICATION OF RIGHTS**

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

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

15 COPY of the foregoing mailed/delivered
16 this 16th day of August, 1996 to:


17 Office of Administrative Hearings
18 1700 West Washington, Suite 602
19 Phoenix, Arizona 85007

20 Charles R. Cohen, Deputy Director
21 Gregory Y. Harris, Executive Assistant Director
22 Catherine O'Neil, Assistant Director
23 John Gagne, Assistant Director
Arnold Sniegowski, Investigator
Maureen Catalioto, Supervisor
Department of Insurance
2910 N. 44th St., Suite 210
Phoenix, Arizona 85018

1 Gerrrie Marks, Assistant Attorney General
Consumer Protection & Antitrust Section
2 Office of the Attorney General
1275 West Washington
3 Phoenix, Arizona 85012

4 Michael S. Brown dba
Design Insurance Services
5 13201 N. 35th Ave.
Suite B15
6 Phoenix, Arizona 85029

7 Michael S. Brown
3823 W. Aire Libre
8 Phoenix, Arizona 85023

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IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:

No. 96A-8649-INS

MICHAEL STEVEN BROWN
License No. 11049,

**RECOMMENDED DECISION
OF ADMINISTRATIVE
LAW JUDGE**

Respondent.

HEARING: July 10, 1996

APPEARANCES: Michael Steven Brown on his own behalf

Assistant Attorney General Gerrie Marks on behalf of the
Arizona Department of Insurance

ADMINISTRATIVE LAW JUDGE: Lewis D. Kowal

On January 12, 1996, in Michael Steven Brown v. Chris Herstam, Director of Insurance and Arizona Department of Insurance, Case No. CV95-12626 ("Case No. CV95-12626"), in the Superior Court of Arizona, Maricopa County, Judge Robert L. Gottsfield entered an Order remanding the matter for a supplemental hearing. Pursuant to that Order, the Administrative Law Judge was to: a) hear testimony of Mr. Laba; b) admit and consider internal memorandum dated January 26, 1985; c) admit for the limited purpose the statement and check; d) consider testimony as to the unavailability of the revocation file; e) be advised as to what records are available from the revocation file; f) have testimony as to whether any returned notice of hearing would have been placed in the revocation file; and g) determine whether Michael Steven Brown was given the requisite procedural due process in a 1985 disciplinary proceeding before the Arizona Department of Insurance ("the Department").

Based on the entire record of the supplemental hearing and the entire administrative record of the April 19, 1995 hearing before the Department, including all

1 pleadings, motions, testimony and exhibits admitted at these proceedings,
2 Administrative Law Judge Lewis D. Kowal has prepared the following Findings of Fact,
3 Conclusions of Law and Recommended Order for consideration by the Director of the
4 Arizona Department of Insurance.

5 **FINDINGS OF FACT**

6 1. On October 2, 1992, Mr. Brown filed an application for a property and
7 casualty insurance agent license with the Department which was subsequently issued
8 to Mr. Brown. On April 13, 1994, Mr. Brown filed an application to renew that license.

9 2. On January 19, 1993, Mr. Brown filed an application for a life and disability
10 insurance agent license with the Department which was subsequently issued to Mr.
11 Brown. On April 26, 1993, Mr. Brown filed an application to renew that license.

12 3. In the above-mentioned license and renewal applications, Mr. Brown was
13 required to disclose prior revocations and did not disclose any.

14 4. In the 1995 hearing of In the Matter of Michael Steven Brown dba Design
15 Insurance Services, ("Docket No. 8649") before the Department, Michael Steven Brown
16 ("Mr. Brown") was determined to have had a record of misappropriation or conversion of
17 monies belonging to policyholders, a record of suspension or revocation of an
18 insurance license and to have materially misrepresented or committed fraud in the
19 application for or attempt to obtain any insurance license.

20 5. In Docket No. 8649, the Director issued an Order which revoked insurance
21 license number 11098 issued to Mr. Brown dba Design Insurance Services.

22 6. Mr. Brown requested a rehearing in Docket No. 8649 which was denied
23 and appealed the Director's Order to Superior Court in Case No. CV95-12626.

24 7. In Docket No. 8649, Mr. Brown asserted that he was not made aware of the
25 1985 revocation of an insurance license that had previously been issued to him by the
26 Department and had not received the Notice of Hearing concerning that matter.

27 8. In Docket No. 8649, the Department contended that the Notice of Hearing,
28 Order and Amended Order which revoked the insurance license held by Mr. Brown in
29

1 1985 ("the previous license") was properly served upon Mr. Brown at his last known
2 address of record.

3 9. The issue for consideration at the supplemental hearing on remand is
4 whether Mr. Brown received the requisite procedural due process at the 1985 hearing
5 of In the Matter of Michael Steven Brown, Jr., Docket No. 5887 ("Docket No. 5887").

6 10. The evidence of record established that the Department does not possess
7 the 1985 hearing file of Docket No. 5887 or the 1985 licensing file of Mr. Brown.

8 11. On August 23, 1983, Mr. Brown reported his address to the Department in
9 his application to renew the life and disability agent license issued under the previous
10 license as being: P.O. Box 26306, Phoenix, AZ 85068.

11 12. On April 24, 1984, Mr. Brown reported his address to the Department in his
12 application to renew the previous license as being: P.O. Box 26306, Phoenix, AZ
13 85260. That address was incorrect in that the zip code was stated as 85260 when the
14 correct zip code was 85068. The zip code of 85260 is not a Phoenix zip code but a
15 Scottsdale zip code and the post office box utilized by Mr. Brown at that time was
16 located in Phoenix not Scottsdale.

17 13. There is no merit to Mr. Brown's contention that the address which the
18 Department mailed the Notice of Hearing, Order and Amended Order in Docket No.
19 5887 was an incorrect address.

20 14. At the address mentioned above in paragraph 11, on December 11 1985,
21 the Director issued and served upon Mr. Brown an Order in Docket No. 5887 ("the
22 Order) and on December 12, 1985 the Director issued and served upon Mr. Brown an
23 Amended Order ("the Amended Order") in which the Director determined that Mr.
24 Brown had committed the violations set forth below in paragraph 15 and the previous
25 license was revoked effective December 20, 1985.

26 15. The Notice of Hearing issued on September 13, 1985 regarding revocation
27 of the previous license ("the Notice of Hearing") alleged in two separate charges that
28 Mr. Brown misappropriated, converted or withheld premiums received in or during the
29 conduct of business under the insurance license or through its use .
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1 16. The hearing of Docket No. 5887 was held on October 17, 1985 and
2 Mr. Brown did not appear at that hearing.

3 17. Department Investigator Arnold Sniegowski testified at the hearing in
4 Docket No. 8649 that the Department's records reflected that the Order, Amended
5 Order and the Notice of Hearing had been served upon Mr. Brown at the address of
6 record and that there was no evidence in the Department's records that those
7 documents were not delivered to Mr. Brown and returned to the Department.

8 18. The evidence presented established that the post office box set forth above
9 in paragraph 11 was opened in February, 1979 and that sometime between February,
10 1979 and 1989 Mr. Brown's name was added so that he could receive mail at that post
11 office box. Mr. Brown received mail at the post office box between 1979 and 1989.

12 19. Mr. Laba testified at the supplemental hearing that other than opening the
13 post office box set forth above in paragraph 11, Mr. Laba had nothing further to do with
14 that post office box and did not retrieve or receive any mail or notices sent to that post
15 office box.

16 20. Once the post office box referred to above in paragraph 11 was opened,
17 Mr. Laba turned over the keys to that post office box to Mr. Brown's father.

18 21. It is uncontroverted that from April, 1984 until May 30, 1985, Mr. Laba had
19 no verbal or written contact with Mr. Brown .

20 22. It is uncontroverted that Mr. Brown notified the Department in a letter dated
21 April 27, 1984, Exhibit A admitted in Docket No. 8649, that as of that date Mr. Brown's
22 address was being changed. The letter stated that for the next 90 days Mr. Brown's
23 address would be 805 W. St. Johns, Phoenix, AZ 85023 ("the St. Johns address"). The
24 letter also stated that Mr. Brown was surrendering the previous license. There is no
25 evidence in the record that the Department accepted Mr. Brown's surrender of the
26 previous license.

27 23. There is no evidence in the record of these proceedings which shows that
28 after April 27, 1984 through December 12, 1985 the Department received any
29 notification from Mr. Brown changing his address from the St. Johns address.
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1 24. In the May 9, 1995 Order issued by the Director in Docket No. 8649, it was
2 determined that Mr. Brown's address of record reverted on July 26, 1984 to P.O. Box
3 26306, Phoenix, AZ 85068. There is nothing in the entire record which supports that
4 finding. Although Mr. Brown's April 27, 1984 letter refers to a 90 period for the change
5 of address, it does not provide for an automatic reversion to a prior address that was
6 provided to the Department. Under the circumstances, without further information being
7 provided to the Department by Mr. Brown, the St. Johns address constituted the
8 address of record the Department had for Mr. Brown on September 23, 1985, and
9 December 11 and December 12, 1985.

10 25. The evidence of record established that the Department did not serve the
11 Notice of Hearing, Order or the Amended Order to the St. Johns address. Further, the
12 evidence of record established that Mr. Brown never received the Notice of Hearing,
13 Order or Amended Order.

14 26. In a letter dated February 26, 1985, Assistant Attorney General Susan
15 Gallinger wrote to Maureen Catalioto, Licensing Supervisor of the Department, that the
16 Department and the Attorney General's Office had been unable to contact Mr. Brown
17 for the past several months. This letter does not indicate the means or locations that
18 were utilized in attempts made to communicate with Mr. Brown. Under the
19 circumstances, this letter was not considered relevant .

20 27. Chris Crawford, formerly an administrative secretary with the Department
21 from 1985 through January 1990 and a legal secretary with the Department from
22 February 1990 through December 1995, testified as to the records retention policy of
23 the Department. Ms. Crawford testified that from April 1991 to September 1992
24 hearing files were retained by the Department for one year. The records were then
25 transferred and retained by the Records Retention Center for four years after which
26 time the records were destroyed. Ms. Crawford further testified that from September 4,
27 1992 through December 1995, the hearing files were retained by the Department for
28 two years. The significant case files were then transferred and maintained by the
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1 Records Retention Center for four years after which time the records were destroyed.
2 Default cases were determined not to be significant case files.

3 28. Ms. Crawford testified that during her tenure as a legal secretary with the
4 Department she did not see any 1985 hearing files and, to her knowledge, those files
5 do not exist.

6 29. Ms. Crawford testified that the procedures set forth above in paragraph 27
7 also applied to the licensing files of the Department. Ms. Crawford also testified that
8 any return mail such as a returned Notice of Hearing would have been maintained in
9 the Department's hearing file.

10 30. Ms. Crawford's testimony as set forth above in paragraphs 27, 28 and 29 is
11 determined to be credible.

12 31. Pursuant to Judge Gottsfeld's January 12, 1996 Order in Case No. CV95-
13 12626, Mr. Brown's check made payable to & Holt and the accompanying statement
14 (Exhibit 3C of the supplemental hearing) were considered by the undersigned
15 Administrative Law Judge. Those documents indicate Mr. Brown's state of mind in that
16 based upon those documents, Mr. Brown believed that he had a defense to the
17 allegations set forth in the Notice of Hearing and had no reason not to appear at the
18 1985 proceeding of Docket No. 5887.

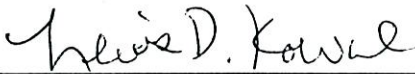
19 **CONCLUSIONS OF LAW**

20 The evidence of record established that Mr. Brown was not provided with the
21 requisite due process in the 1985 proceeding in Docket No. 5887. Therefore, the
22 Amended Order issued in Docket No. 5887 is invalid.

23 **RECOMMENDED ORDER**

24 Having determined that the Amended Order is invalid and there being no other
25 grounds raised in the Order of Docket No. 8649 to support the revocation of license
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1 number 1098, the undersigned Administrative Law Judge recommends that the
2 Amended Order issued in Docket No. 5887 and the Order issued in Docket No. 8649
3 be vacated.
4

5 
6 _____
7 LEWIS D. KOWAL
8 Administrative Law Judge

9 Original transmitted by mail to:

10 Chris Herstam
11 Director
12 ATTN: Curvey Burton
13 Department of Insurance
14 2910 North 44th Street, 210
15 Phoenix, AZ 85018-7256

16 By: 
17 Sharon A. Kimbrell
18 Legal Secretary
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MAY 9 1995

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

DEPARTMENT OF INSURANCE
By

In the Matter of)	Docket No. 8649
)	
MICHAEL STEVEN BROWN, dba)	ORDER
DESIGN INSURANCE SERVICES,)	
)	
Respondent.)	
_____)	

On April 19, 1995, a hearing took place in the above-referenced matter. Consumer Protection and Antitrust Section Chief Counsel Sydney Davis appeared on behalf of the Arizona Department of Insurance ("Department"). Respondent Michael Steven Brown, dba Design Insurance Services ("Mr. Brown") appeared in propria persona.

Based upon the entire record, including all pleadings, motions, testimony, and exhibits, Administrative Law Judge Gregory Y. Harris prepared the following Findings of Fact, Conclusions of Law, and Order for consideration and approval by the Director of the Department (the "Director"). The Director adopts and enters the following Findings of Fact, Conclusions of Law and enters the following Order:

FINDINGS OF FACT

Jurisdiction

1. Mr. Brown currently holds license number 11098 (the "License") issued by the Department, which authorizes him to act as both a life and disability and as a property and casualty insurance agent. These licenses expire in April 1995 and April 1996, respectively.

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The Revocation Proceedings under the Previous License

2. Until December 20, 1985, Mr. Brown held insurance license number 14978 (the "Previous License") to transact insurance in Arizona.

Mr. Brown's Address of Record Under the Previous License

3. On August 19, 1983, Mr. Brown reported the following address as his address of record to the Department on the application he filed to renew the life and disability agent license issued under the Previous License:

P.O. Box 26306
Phoenix, AZ 85068

4. From at least August 1983 through December 1985, Mr. Brown used the post office box identified in ¶3 as his address of record with the Department.

5. On April 24, 1984, when Mr. Brown filed an application to renew the property and casualty agent license issued under the Previous License, Mr. Brown erroneously gave the following address to the Department:

P.O. Box 26306
Phoenix, AZ 85260

Exhibit 8. Mr. Brown wrote the wrong zip code when he completed this renewal application rather than the correct zip code, 85068.

6. Mr. Brown never received mail nor did he ever have a post office box at the mailing address listed in ¶5 Further, 85260 is not a Phoenix zip code.

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. . .

1 The Department Mailed Notice of the Proceedings Under
2 Docket No. 5887 to Mr. Brown at his Address of Record
3 Under the Previous License

4 7. On September 23, 1985, the Director issued a
5 Notice of Hearing to Mr. Brown under the Previous License. The
6 Notice alleged two separate charges that Mr. Brown had
7 misappropriated, converted, or withheld insurance premiums
8 received in connection with his actions as a licensed insurance
9 agent, in violation of A.R.S. §20-316. In the Matter of Michael
10 Steven Brown, Jr., Docket No. 5887 ("Docket No. 5887").

11 8. On October 17, 1985, the Department conducted a
12 hearing in Docket No. 5887. Mr. Brown did not appear for the
13 hearing. At the hearing, counsel for the Department presented
14 evidence and testimony from which the Director made findings of
15 fact and conclusions of law and entered an order that revoked the
16 Previous License.

17 9. On December 12, 1985, the Director issued an
18 Amended Order in Docket No. 5887 in which the Director found that
19 Mr. Brown misappropriated or converted to his own use money that
20 belonged to a policyholder in violation of A.R.S. §20-316.
21 Effective December 20, 1985, the Director revoked the Previous
22 License.

23 10. Arnold Sniegowski, a Department investigator,
24 testified that the Department's records reflected that the
25 Amended Order and the Notice of Hearing in Docket No. 5887 had
26 both been served upon Mr. Brown at the address of record
27 identified in ¶3. Mr. Sniegowski further testified that the
28 Department's records contained no evidence to show that these
documents had been returned without being delivered to Mr. Brown.

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11. A licensee's address of record constitutes the address through which the Department maintains contact with a licensee. The Department has the right to rely on the accuracy of the address information that a licensee provides. A licensee has the responsibility to inform the Director of address changes. A.R.S. §20-313. Notice mailed to a licensee's address of record constitutes complete service.

12. Mr. Brown received notice of the proceedings and the final order in Docket No. 5887. The Department effected service of the required notice by mailing a copy of the Notice of Hearing and the Amended Order in Docket No 5887 to Mr. Brown at the address of record identified in ¶3.

The Issuance of License No. 11098

13. On October 2, 1992, Mr. Brown filed an application for a property and casualty insurance agent license (the "P&C Application") with the Department. The Director issued the License. Mr. Brown filed an application to renew the property and casualty insurance agent license on April 13, 1994.

14. On January 19, 1993, Mr. Brown filed an application for a life and disability insurance agent license (the "L&D Application") with the Department. The Director issued the license. Mr. Brown filed an application to renew the life and disability insurance agent license on April 26, 1993.

15. On page 26 of both the P&C Application and the L&D Application, Mr. Brown was asked:

Have you ever been refused an insurance, securities, or other license by a public authority of any jurisdiction; and has any such license, if issued to you, ever been suspended or revoked?

1 Mr. Brown answered "No" to these questions on both the P&C
2 Application and the L&D Application, despite the fact that the
3 Director had ordered the revocation of the Previous License in
4 Docket No. 5887.

5 Mr. Brown's Defense to the Current Proceedings

6 16. Mr. Brown claims that on April 24, 1984, he
7 notified the Department that he intended to surrender the
8 Previous License and that his address of record had changed. To
9 support this claim, Mr. Brown produced a copy of a letter on the
10 day of the hearing that states in part:

11 Enclosed please find my original insurance
12 licenses. I am leaving the insurance industry on
13 the above date and am hereby surrendering my
license.

14 My address for the next 90 days will be 805
15 W. St. Johns, Phoenix, AZ 85023. I may be
16 contacted at this address during this time if you
17 should require any additional information.

18 Exhibit A (emphasis added). Mr. Brown also claims that he never
19 received notice of the proceedings under Docket No. 5887 or the
20 revocation of the Previous License in that matter.

21 17. The Department did not acknowledge, and Mr. Brown
22 did not receive an acknowledgment or other answer from the
23 Department in response to Exhibit A.

24 18. The Department's records contain no evidence of
25 the Department's receipt of the original of Exhibit A from Mr.
26 Brown in 1984, nor does the Department have a record of Mr.
27 Brown's attempt to surrender the Previous License.

28 19. The Department did not accept the surrender of the
Previous License from Mr. Brown.

1 24. For the Director to exercise this discretion,
2 applicants for the issuance of a license must submit an
3 application to the Director. A.R.S. §20-291. When reviewing an
4 application, the Director must consider:

5 a. Whether the applicant meets the qualifications
6 prescribed by the Legislature for the issuance of the license.

7 b. The applicant's identity, personal history,
8 business record, experience in insurance, the purpose for which
9 the license is to be used, and "other pertinent facts the
10 Director requires." A.R.S. §20-291(A).

11 c. Whether the applicant has been previously
12 licensed to transact any kind of insurance in this state or
13 elsewhere. A.R.S. §20-291(B)(1).

14 d. Whether the applicant has previously had a
15 license refused, suspended or revoked. A.R.S. §20-291(B)(2).

16 25. After considering these factors, the Director may
17 refuse to accept an application or refuse to issue a license if
18 these or other factors exist that draw into question the
19 applicant's qualifications for license, including a material
20 misrepresentation or fraud in the application for, or attempt to
21 obtain an insurance license. A.R.S. §20-290(B)(1); see A.R.S.
22 §20-316(A)(3).

23 26. Applicants for the issuance of an insurance
24 license must truthfully, fully, and adequately disclose
25 information on a license application. A.R.S. §20-316(A)(2). If
26 an applicant for the issuance of an insurance license fails to
27 disclose background information which falls within the scope of
28 A.R.S. §§20-290(B), 20-291(A) and 20-291(B), the non-disclosure

