

STATE OF ARIZONA

STATE OF ARIZONA  
FILED

DEPARTMENT OF INSURANCE

MAR 20 1997

DEPT. OF INSURANCE

BY Kelly

In the Matter of:	)	Docket No. 97A-012-INS
	)	
JAMES ROBERT MILLER,	)	<b>ORDER</b>
	)	
Respondent.	)	
<hr/>		

On March 14, 1997, the Office of Administrative Hearings, through Administrative Law Judge Robert I. Worth, submitted "Decision and Recommended Order" ("Recommended Order"), a copy of which is attached and incorporated by this reference. The Director of the Arizona Department of Insurance has reviewed the Recommended Order and enters the following order:

1. The recommended findings of fact and conclusions of law are adopted
2. The life and disability insurance agent's license held by James Robert Miller is 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).


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 19 day of March, 1997

4  
5   
6 John A. Greene  
7 Director of Insurance

8 A copy of the foregoing mailed  
9 this 20<sup>th</sup> day of March, 1997

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

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

21 Michael J. De La Cruz  
22 Assistant Attorney General  
23 1275 W. Washington  
Phoenix, AZ 85007

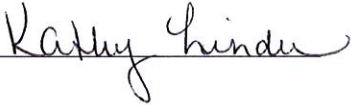
James Robert Miller  
1916 E. Colgate  
Tempe, AZ 85283

James Robert Miller  
c/o National Benefit Systems of Az., Inc.  
8070 E. Morgan Trail, #125  
Scottsdale, AZ 85258

1 Capitol American Life Insurance Company  
1001 Lakeside Avenue  
2 Northpoint Tower, Eighth Floor  
Cleveland, OH 44114-1195

3 Hartford Life Insurance Company  
4 P.O. Box 2999  
Hartford, CT 06104-2999

5 Trustmark Life Insurance Company  
6 400 Field Drive  
lake Forest, IL 60045-2581

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3 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**  
4

5 **In the Matter of:**

No. 97A-012-INS

6 **JAMES ROBERT MILLER,**

7  
8 **Respondent.**

**DECISION AND RECOMMENDED ORDER**

9  
10  
11 The above-entitled matter came on for hearing on March 11, 1997 pursuant to  
12 advance notice duly sent to all parties. The Arizona Department of Insurance (herein  
13 called the "Department") was represented by Assistant Attorney General, Michael J.  
14 De La Cruz, and the named Respondent, James Robert Miller, failed to appear.  
15 Evidence was presented and based upon the entire record, the following Findings of  
16 Fact, Conclusions of Law and Recommended Order have been prepared and are  
17 hereby submitted by the undersigned Administrative Law Judge for review,  
18 consideration, approval and adoption by the Director of the Department (herein called  
19 the "Director").  
20

21  
22  
23 **FINDINGS OF FACT**

24  
25 1. Respondent, James Robert Miller, was the holder of a life and disability  
26 insurance agent license, number 5448, issued by the Arizona Department of Insurance.  
27 Following renewals of this license in January, 1993 and in January, 1995, Mr. Miller's  
28 license has recently expired on January 31, 1997. However, pursuant to the provisions  
29 of A.R.S. §20-314, Respondent retains the ability to belatedly file a renewal application  
30 within six months after such expiration, in which event the payment of an additional fee  
would be required.

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1  
2 2. The uncontroverted documentary evidence presented at the hearing  
3 demonstrated that, subsequent to the filing by Mr. Miller of his renewal application in  
4 January 1993, he was convicted in August, 1994 of a felony based upon his plea of  
5 guilty that was entered pursuant to a plea agreement. (Case Number CR94-91568).  
6 The criminal conduct which formed the basis of such felony conviction consisted of the  
7 possession of dangerous drugs.

8  
9 3. As a direct result of the above-described felony conviction, Mr. Miller was  
10 sentenced in late September, 1994 to a term of four years probation, four hundred  
11 hours of community service and the payment of specified fees, assessments and fines.  
12 A three month period of incarceration in the Maricopa County Jail had also formed a  
13 part of the originally imposed sentence, but was deleted shortly prior to its  
14 commencement date by a Court Order entered in November, 1994 modifying the  
15 conditions of the original sentence.

16  
17 4. Mr. Miller filed an application to renew his insurance license in December,  
18 1994. In completing the renewal application form, a specific question with respect to  
19 whether the renewal applicant had been convicted of a felony since the last application  
20 or renewal thereof was answered in the negative by Mr. Miller.

21  
22 5. Under all the circumstances, including the proximity in time to the felony  
23 conviction, an inference is fully supportable that Mr. Miller's incorrect answer, as well as  
24 his failure to affirmatively disclose the serious felony conviction for which he had been  
25 sentenced only three months earlier, was intentionally misleading and further  
26 constitutes a material misrepresentation to the Department.  
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1  
2 6. By his failure to attend and participate in the scheduled hearing, Respondent  
3 presented no evidence in defense or in mitigation of the statutory violations charged in  
4 the Notice of Hearing.  
5

6  
7 **CONCLUSIONS OF LAW**  
8

9 1. The Director has jurisdiction over this matter pursuant to the provisions of  
10 A.R.S. §§20-161 and 20-290.  
11

12 2. The undisputed evidence of record adequately established that Mr. Miller's  
13 conduct in failing to disclose his felony conviction and in untruthfully answering a  
14 specific question as to such fact on the renewal application form he submitted  
15 constitutes a willful misrepresentation of a fact required to be disclosed to the  
16 Department in violation of A.R.S. § 20-191(G).  
17

18 3. The actions of Mr. Miller further constitute misrepresentation or fraud in  
19 obtaining the renewal of his life and disability agent's insurance license and provide  
20 grounds, pursuant to A.R.S. §§ 20-316(A)(2) and (3), and also A.R.S. §20-316(C), for the  
21 Director to suspend, revoke or refuse to renew Mr. Miller's license or to impose a civil  
22 penalty against Respondent.  
23

24 4. Under the proven facts and circumstances of this case, including Mr. Miller's  
25 default in appearance at the hearing, the imposition of a license revocation appears to  
26 be appropriate and fully warranted under the totality of the evidence of record  
27 hereunder.  
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**RECOMMENDED ORDER**

In view of the foregoing, it is recommended that the Director enter his Order revoking the life and disability agent's insurance license held by James Robert Miller.

Dated: March 14, 1997

OFFICE OF ADMINISTRATIVE HEARINGS



Robert I. Worth  
Administrative Law Judge

Original transmitted on March 14, 1997

By: Shea Ruhl To:

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