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STATE OF ARIZONA
FILED

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DEPT. OF INSURANCE
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7 STATE OF ARIZONA

8 DEPARTMENT OF INSURANCE

9 In the Matter of:) No. 97A-171-INS
10 **CRAIG ALAN MATUSZ**) **FINDINGS OF FACT, CONCLUSIONS**
11 Respondent.) **OF LAW AND ORDER**
12

13 On October 8, 1997, the Arizona Department of Insurance (the "Department") issued a
14 Notice of Hearing ("Notice") in this matter, a copy of which is attached and incorporated herein by
15 this reference. The Notice required Craig Alan Matusz ("Respondent") to provide written answers
16 to the allegations set forth in the Notice within twenty days of the issuance of the Notice. As of
17 this date, Respondent has failed to file an answer. On November 4, 1997, counsel for the
18 Department filed a Request for Default and proposed Findings of Fact, Conclusions of Law and
19 Order. As of this date, Respondent has not responded to the Department's request. Pursuant to
20 A.A.C. R20-6-106(D), a party that fails to file an answer within the time provided shall be deemed
21 to be in default and one or more of the allegations in the Notice of Hearing may be deemed to be
22 admitted.

23 FINDINGS OF FACT

- 24 1. Notice was proper.
25 2. Craig Alan Matusz is in default.
26 3. The allegations in the Notice of Hearing are deemed admitted.

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CONCLUSIONS OF LAW

1. The conduct alleged in the Notice constitutes grounds for the Director to suspend, revoke or refuse to renew Mr. Matusz' license to transact insurance in Arizona, within the meaning of A.R.S. § 20-316(A).
2. The conduct alleged in the Notice constitutes rounds for the Director to impose a civil penalty pursuant to A.R.S. §§ 20-316(C) and 456(B).
3. The conduct alleged in the notice constitutes grounds for the Director to order restitution, pursuant to A.R.S. § 20-316(C).

RECOMMENDED ORDER

IT IS ORDERED:

1. All insurance licenses held by Craig Alan Matusz are revoked effective upon the issuance of this Order.
2. Respondent shall make restitution to Bankers Life and Casualty Company in the amount of three-thousand-nine-hundred-ninety-one dollars and thirty-three cents (\$3,991.33).
3. Respondent shall pay a civil penalty in the amount of three-thousand-three-hundred-fifty dollars (\$3,350) to the Director payable upon entry of this Order for remission to the State Treasurer for deposit in the State General Fund.
4. The hearing set for November 10, 1997, shall be vacated.

DATED this 5 day of November, 1997.



JOHN A. GREENE, Director
Arizona Department of Insurance

1 COPY of the foregoing mailed this
2 5 day of November, 1997, to:

3 The Honorable Lewis D. Kowal
4 Administrative Law Judge
5 Office of Administrative Hearings
6 1700 West Washington, Suite 602
7 Phoenix, Arizona 85007

8 Charles R. Cohen, Deputy Director
9 Gregory Y. Harris, Executive Assistant Director
10 John Gagne, Assistant Director
11 Maureen Catalioto, Licensing Supervisor
12 Arizona Department of Insurance
13 2910 North 44th Street, Suite 210
14 Phoenix, Arizona 85018

15 Craig Alan Matusz
16 14633 North 55th Place
17 Phoenix, Arizona 85254

18 Mario Guevara
19 Office of Administrative Hearings
20 1700 West Washington, Suite 602
21 Phoenix, Arizona 85007

22 Kathy Lindu for
23 Curvey Walters Burton

24 CPAPHX15347

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RECEIVED

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

DEPT. OF INSURANCE
BY CS

In the Matter of:)
)
CRAIG ALAN MATUSZ,)
)
Respondent.)
_____)

No. 97A-171-INS

NOTICE OF HEARING

PLEASE TAKE NOTICE that pursuant to the provisions of Arizona Revised Statutes ("A.R.S.") §§20-161 through and including 20-165, 41-1061 through and including 41-1066 and 41-1091.01, the above-captioned matter will be heard before the Director of Insurance of the State of Arizona (the "Director"), or his duly designated representative, on the 10th day of November, 1997, at 9:00 a.m., at Office of Administrative Hearings, 1700 West Washington Street, Capitol Tower, West Wing, Suite 602, Phoenix, Arizona (the "Hearing").

Motions to continue this matter shall be made in writing to the Administrative Law Judge not less than five (5) business days prior to the date set for the hearing. A copy of any motion to continue shall be mailed or hand-delivered to the opposing party on the same date of filing with the Office of Administrative Hearings.

A.R.S. §20-164 entitles any person affected by this Hearing to appear in person and by counsel, to be present during the giving of all evidence, to have a reasonable opportunity to inspect all documentary evidence, to examine witnesses, to present supporting evidence, and to have subpoenas issued by the Administrative Law Judge to compel attendance of witnesses and production of evidence.

If Respondent is represented by counsel, the attorney shall be licensed to practice law in the State of Arizona or, if Respondent is an insurer, it may be represented by a corporate officer, pursuant to A.R.S. §20-161(B).

1 Pursuant to A.R.S. §41-1092(D), a clear and accurate record of the proceedings will be made
2 by a court reported or by electronic means. Any party that requests a transcript of the proceedings
3 shall pay the cost of the transcript to the court reporter or other transcriber.

4 Questions concerning issues raised in this Notice of Hearing should be directed to Assistant
5 Attorney General Shelby L. Cuevas (602) 542-7725, 1275 West Washington, Phoenix, Arizona
6 85007.

7 NOTICE OF APPLICABLE RULES

8 On January 23, 1992, the Arizona Department of Insurance adopted A.A.C. R20-6-101 through
9 R20-6-115, setting forth the rules of practice and procedure applicable in contested cases before the
10 Director of Insurance. The hearing will be conducted pursuant to these rules.

11 PURSUANT TO A.A.C. R20-6-106, RESPONDENT SHALL FILE A WRITTEN ANSWER
12 WITHIN 20 DAYS AFTER ISSUANCE OF THIS NOTICE OF HEARING AND SHALL MAIL OR
13 DELIVER A COPY OF THE ANSWER TO THE ASSISTANT ATTORNEY GENERAL
14 DESIGNATED ABOVE. THE ANSWER SHALL STATE RESPONDENT'S POSITION OR
15 DEFENSE AND SHALL SPECIFICALLY ADMIT OR DENY EACH ASSERTION IN THE
16 NOTICE OF HEARING. ANY ASSERTION NOT DENIED SHALL BE DEEMED TO BE
17 ADMITTED. ANY DEFENSE NOT RAISED IN ANSWER SHALL BE DEEMED WAIVED. IF
18 AN ANSWER IS NOT TIMELY FILED, RESPONDENT SHALL BE DEEMED IN DEFAULT
19 AND THE DIRECTOR MAY DEEM THE ALLEGATIONS ARE TRUE, AND TAKE WHATEVER
20 ACTION IS APPROPRIATE, INCLUDING SUSPENSION, REVOCATION, DENIAL OF A
21 LICENSE, OR DENIAL OF RENEWAL OF A LICENSE, IMPOSITION OF A CIVIL PENALTY
22 AND/OR ORDER RESTITUTION TO ANY PARTY INJURED.

23 PERSONS WITH DISABILITIES MAY REQUEST REASONABLE ACCOMMODATIONS
24 SUCH AS INTERPRETERS, ALTERNATIVE FORMATS, OR ASSISTANCE WITH PHYSICAL
25 ACCESSIBILITY. REQUESTS FOR ACCOMMODATIONS SHOULD BE MADE AS EARLY AS
26 POSSIBLE TO ALLOW TIME TO ARRANGE THE ACCOMMODATIONS. IF YOU REQUIRE

1 ACCOMMODATIONS, PLEASE CONTACT THE OFFICE OF ADMINISTRATIVE HEARINGS
2 AT (602) 542-9826.

3 The allegations supporting this Notice of Hearing are as follows:

4 1. Craig Alan Matusz ("Matusz") is currently and was at all times material to this matter
5 licensed as a life and disability insurance agent (License No. 20995). That license is due to expire
6 October 31, 1997.

7 2. From February 28, 1994 through July 12, 1996, Matusz was authorized to sell Life and
8 Disability insurance policies through Bankers Life and Casualty Company ("Bankers").

9 COUNT I

10 3. On March 9, 1995, Matusz accepted an application on behalf of Roger Alswager ("Mr.
11 Alswager") and Lucille Alswager ("Mrs. Alswager") for Long Term Care insurance coverage through
12 Bankers.

13 4. As a result of the application, Bankers issued a Long Term Care insurance policy for
14 Mrs. Alswager, but declined the coverage for Mr. Alswager due to his prior medical history.

15 5. On or about April 28, 1995, Matusz signed the signatures of both Mr. and Mrs.
16 Alswager, with neither their knowledge nor consent, to a "Change Form" from Bankers. The "Change
17 Form" notified Mr. and Mrs. Alswager that Mr. Alswager would not be covered by the policy, and the
18 premium was thus reduced. Mr. and Mrs. Alswager were to sign the form acknowledging that they
19 had read, understood and agreed to the changes made to the policy.

20 6. In November 1995, the Alswagers discovered that Mr. Alswager was not covered by
21 the policy, and requested that Bankers void the policy and refund all premiums paid. Bankers
22 complied with the Alswagers' request.

23 7. Matusz' conduct alleged above constitutes wilful violation of or wilful noncompliance
24 with any provision of this title, or any lawful rule, regulation or order of the director in violation of
25 A.R.S. §20-316(A)(2).

1 8. Matusz' conduct alleged above constitutes a source of injury or loss to, or repeated
2 complaint by, the public or any insurer in violation of A.R.S. §20-316(A)(7).

3 9. Matusz' conduct alleged above constitutes misrepresenting the terms or benefits of any
4 policy issued, pursuant to A.R.S. §20-443(1).

5 10. Matusz' conduct alleged above constitutes presenting to an insurer an application for
6 the issuance of an insurance policy which he knew to contain materially false information concerning
7 a fact material to the application, in violation of A.R.S. §20-463(A)(1)(a).

8 11. Grounds exist for the Director to suspend, revoke or refuse to renew Matusz' insurance
9 license, impose a civil penalty upon Matusz, and/or order restitution, pursuant to A.R.S. § § 20-316(A)
10 and (C) and 20-456(B).

11 COUNT II

12 12. On or about May 16, 1995, Matusz accepted an original application on behalf of
13 William J. Lanctot ("Mr. Lanctot") and Dorothy W. Lanctot ("Mrs. Lanctot") for Long Term Care
14 insurance coverage through Bankers.

15 13. The original application correctly listed Mr. Lanctot's age as 73 and his birth date as
16 November 11, 1921 and Mrs. Lanctot's age as 68 and her birth date as March 15, 1927. On the
17 original application, Mr. and Mrs. Lanctot selected the "compounded increases option" providing for
18 an increase in benefits commensurate with the cost of living. The "compounded increases option"
19 raises the policy's premium.

20 14. Mr. Matusz failed to submit the Lanctots' original application to Bankers.

21 15. Sometime after May 16, 1995, Matusz completed a second application with Bankers
22 for the Lanctots. On the second application, Matusz misrepresented both Mr. and Mrs. Lanctot's ages
23 as 67. On this application, Matusz declined the "compounded increases option." Matusz then signed
24 Mr. and Mrs. Lanctot's signatures to the second application without their permission.

25 16. Matusz submitted the second application to Bankers, and as a result of that application,
26 Bankers issued a long term policy to Mr. and Mrs. Lanctot.

1 24. Sometime after September 13, 1995, Matusz completed a second application for Long
2 Term Home Care and Medicare Supplemental insurance coverage for Mrs. Weik. On the second
3 application, Matusz misrepresented Mrs. Weik's age as 64 and her date of birth as September 21,
4 1930.

5 25. Mrs. Weik was not aware of this mistake because prior to delivering the policy to Mrs.
6 Weik, Matusz deleted her birth date and issue age information from the schedule page of her policy.

7 26. The premium amounts Matusz quoted Mrs. Weik for Long Term Care and Medicare
8 Supplement based on her misrepresented age were lower than premiums based on Mrs. Weik's correct
9 age. The misrepresented and correct premium amounts are as follows:

	<u>Premium based on</u> <u>Misrepresented age</u>	<u>Premium based on</u> <u>Correct age</u>
Long Term Care	\$1,294.79/yr.	\$2,433.58/yr.
Medicare Supplement	\$884.83/yr.	\$1,107.59/yr.

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14 Upon discovery of Matusz' misrepresentation, Bankers agreed to accept the lower premium amounts
15 of \$1,294.79 and \$884.83. Bankers has continued to accept premium payments from Mrs. Weik at
16 the lower amount which has meant a loss for Bankers.

17 27. Matusz' conduct alleged above constitutes wilful violation of or wilful noncompliance
18 with any provision of this title, or any lawful rule, regulation or order of the director in violation of
19 A.R.S. §20-316(A)(2).

20 28. Matusz' conduct alleged above constitutes a source of injury or loss to the public or any
21 insurer in violation of A.R.S. §20-316(A)(7).

22 29. Matusz' conduct alleged above constitutes misrepresenting the terms of any policy
23 issued, pursuant to A.R.S. §20-443(1).

24 30. Matusz' conduct alleged above constitutes presenting to an insurer an application for
25 the issuance of an insurance policy which he knew to contain materially false information concerning
26 a fact material to the application, in violation of A.R.S. §20-463(A)(1)(a).

1 31. Grounds exist for the Director to suspend, revoke or refuse to renew Matusz' insurance
2 license, impose a civil penalty upon Matusz, and/or order restitution, pursuant to A.R.S. §20-316(A)
3 and (C) and 20-456(B).

4 COUNT IV

5 32. On or about December 20, 1995, on behalf of Vincent E. Pawlak ("Mr. Pawlak") and
6 Shirley J. Pawlak ("Mrs. Pawlak"), Matusz accepted an original application for Life insurance and
7 Long Term Care coverage through Bankers. On the original application, Matusz incorrectly listed Mr.
8 and Mrs. Pawlak's year of birth as 1930. The correct year of birth for both Mr. and Mrs. Pawlak is
9 1927.

10 33. Matusz signed the application certifying that he "...asked all the questions and truly and
11 accurately recorded the answers contained [therein]."

12 34. Neither Mr. nor Mrs. Pawlak detected the misrepresentation about their age, and signed
13 the application.

14 35. The premium amounts Matusz quoted Mr. and Mrs. Pawlak for Long Term Care and
15 Life insurance based on their misrepresented ages were lower than premiums based on Mr. and Mrs.
16 Pawlak's correct ages. The misrepresented and correct combined amounts of the premiums are as
17 follows:

	<u>Premium based on</u> <u>Misrepresented age</u>	<u>Premium based on</u> <u>Correct age</u>
Long Term Care	\$2,784.63/yr.	\$3,686.15/yr.
Life	\$710.39/yr.	\$843.36/yr.

22 Upon discovery of Matusz' misrepresentation, Bankers agreed to accept the lower premium amounts
23 of \$2,784.62 and \$710.39 from Mr. and Mrs. Pawlak. Bankers has continued to accept premium
24 payments from the Pawlaks at the lower amount which has meant a loss for Bankers.

1 36. Matusz' conduct alleged above constitutes wilful violation of or wilful noncompliance
2 with any provision of this title, or any lawful rule, regulation or order of the director in violation of
3 A.R.S. §20-316(A)(2).

4 37. Matusz' conduct alleged above constitutes a source of injury or loss to, or repeated
5 complaint by, the public or any insurer in violation of A.R.S. §20-316(A)(7).

6 38. Matusz' conduct alleged above constitutes misrepresenting the terms of any policy
7 issued, pursuant to A.R.S. §20-443(1).

8 39. Matusz' conduct alleged above constitutes presenting to an insurer an application for
9 the issuance of an insurance policy which he knew to contain materially false information concerning
10 a fact material to the application, in violation of A.R.S. §20-463(A)(1)(a).

11 40. Grounds exist for the Director to suspend, revoke or refuse to renew Matusz' insurance
12 license, impose a civil penalty upon Matusz, and/or order restitution, pursuant to A.R.S. § §20-316(A)
13 and (C) and 20-456(B).

14 COUNT V

15 41. On February 11, 1997, the Director sent to Matusz, via Certified Mail, an "Order to
16 Appear" for an Examination Under Oath. The Examination Under Oath was scheduled for February
17 19, 1997.

18 42. The Order to Appear was received by Matusz on February 15, 1997, as evidenced by
19 the Return Receipt.

20 43. Matusz failed to comply with the Director's order by appearing at the Department, nor
21 did Matusz make a request to reschedule the examination.

22 44. Matusz's conduct alleged above constitutes the wilful violation of Title 20 and failure
23 to comply with an order of the director in violation of A.R.S. §20-316(A)(2).

24 45. Grounds exist for the Director to suspend, revoke or refuse to renew Matusz' insurance
25 license, impose a civil penalty upon Matusz, and/or order restitution, pursuant to A.R.S. §20-316(A)
26 and (C).

1 WHEREFORE, if after hearing, the Director finds the grounds alleged above, the Director may
2 suspend, revoke or refuse to renew Respondent's insurance license or order restitution, pursuant to
3 A.R.S. §§20-316(A) and (C) and 20-456(B).

4 Pursuant to A.R.S. §20-150, the Director of Insurance delegates the authority vested in the
5 Director of Insurance of the State of Arizona, whether implied or expressed, to the Director of the
6 Office of Administrative Hearings or his designee to preside over the hearing of this matter as the
7 Administrative Law Judge, to make written recommendations to the Director of Insurance consisting
8 of proposed findings of fact, proposed conclusions of law, and a proposed order. This delegation does
9 not include delegation of the authority of the Director of Insurance to make the order on hearing or
10 other final decision in this matter.

11 Pursuant to A.R.S. §41-1092.01, your hearing will be conducted through the Office of
12 Administrative Hearings, an independent agency. Enclosed is a copy of the procedures to be followed.

13 DATED this 8 day of October, 1997.

14
15 
16 _____
17 JOHN A. GREENE, Director
18 Arizona Department of Insurance

18
19 COPY of the foregoing mailed
20 this 8th day of October, 1997 to:

21 Office of Administrative Hearings
22 1700 West Washington, Suite 602
23 Phoenix, AZ 85007

24 Shelby L. Cuevas
25 Assistant Attorney General
26 1275 West Washington Street
Phoenix, Arizona 85007
Attorney for the Department

1 Charles R. Cohen, Deputy Director
Gregory Y. Harris,
2 John Gagne, Assistant Director
Maureen Catalioto, Supervisor
3 Department of Insurance
2910 North 44th Street, Suite 210
4 Phoenix, Arizona 85018

5 Craig Alan Matusz
14633 North 55th Place
6 Phoenix, Arizona 85254
Respondent

7 Mario Guevara
8 Office of Administrative Hearings
1700 West Washington, Suite 602
9 Phoenix, Arizona 85007

10 A courtesy copy of this Notice of Hearing has been mailed/delivered to the persons listed
below. If you are listed below, you will receive no further notices or documents concerning this matter
11 other than the Director's final order. Information about the status of this matter, including whether
the hearing date has been changed, may be obtained by contacting the Department of Insurance at
12 (602) 912-8454 or the Assistant Attorney General identified above, at (602) 542-7725.

13 Bankers Life & Casualty Insurance Company
222 Merchandise Mart Plaza
14 Chicago, Illinois 60654-2001

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