

JUN 28 1993

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

DEPARTMENT OF INSURANCE
By

1)	Docket No. 7687
2)	
3)	
4)	ORDER ON HEARING ON
5)	REMAND
6)	
)	
)	

In the Matter of
HENRY DEJONGE,

Respondent.

7 On June 17, 1993, a hearing was held in the
8 above-referenced matter. Respondent was present in person and
9 through counsel, Frederick C. Berry, Jr., Esq. The Arizona
10 Department of Insurance ("Department") was represented by
11 Assistant Attorney General Kathryn Leonard, Esq.

12 Pursuant to a minute entry of the Honorable John R.
13 Sticht of the Superior Court of Arizona in and for the County of
14 Maricopa, the record in this proceeding was reopened to
15 reconsider the following:

16 (1) Admissibility and weight of documents offered by
17 Respondent at the hearing identified collectively as
18 "Respondent's Exhibit Group 1", and

19 (2) Response of witness Jerry E. Ditzel to the
20 following question posed by Respondent at the hearing:

21 Q. Isn't it true, Jerry, that the
22 Insurance Department in the state of New
23 York, isn't it true, found that you
committed forgery up there?

24 Based upon the evidence presented at the hearing in
25 this matter on June 2, 1992 and on June 17, 1993, we find as
26 follows:

27 . . .
28 . . .

1 1. "Respondent's Group Exhibit 1" consisted of 8
2 half-sheets of paper bearing the same typewritten statement and
3 different signatures. These documents were offered by
4 Respondent as the statements of the individuals that Respondent
5 provided refunds to. This exhibit was offered but not admitted
6 at the hearing on June 2, 1992.

7 2. At the hearing on June 17, 1993, Respondent
8 testified that he prepared the typewritten portion of each
9 document of "Respondent's Group Exhibit 1" and that he and his
10 wife delivered the documents to the individuals that received
11 refunds and asked them to review and sign the documents. Each
12 of these written statements state that the individuals were not
13 induced to purchase a policy from Respondent by an offer to pay
14 a rebate. "Respondent's Group Exhibit 1" was admitted into
15 evidence on June 17, 1993.

16 3. On June 17, 1993, Respondent also offered
17 "Respondent's Group Exhibit 2" and "Respondent's Group Exhibit
18 3" into evidence to be considered in determining the weight to
19 be accorded to "Respondent's Group Exhibit 1". "Respondent's
20 Group Exhibit 2" consisted of documents identical to
21 "Respondent's Group Exhibit 1" with the addition of a notarized
22 signature on each. "Respondent's Group Exhibit 2" was admitted
23 into evidence on June 17, 1993.

24 4. "Respondent's Group Exhibit 3" consisted of three
25 almost identical supplemental affidavits executed in June 1993
26 by three of the individuals that received refunds. These
27 affidavits were drafted and typed by Respondent or his counsel
28 and avow that the premium refunds they received from Respondent

1 were not inducements to purchase Medicare supplement insurance.
2 These individuals avowed that Respondent had incorrectly advised
3 them that First National Life Insurance Company ("First
4 National") would refund the premium for the pre-existing
5 reduction rider. These individuals further avowed that
6 Respondent advised them that First National subsequently refused
7 to refund the premium and that "[t]o fulfill his moral if not
8 legal obligation to make good on this broken promise, Mr.
9 DeJonge did refund by use of his business check, the additional
10 premium [these individuals] paid for the waiver of the
11 pre-existing condition waiting period." "Respondent's Group
12 Exhibit 3" was admitted.

13 5. We have no reason to doubt the credibility of the
14 individuals who executed the written statements and affidavits.
15 They probably did believe Respondent's explanation that he made
16 the refunds to fulfill a "broken promise". However, based upon
17 the totality of the evidence presented at the hearing, we find
18 this explanation to be implausible.

19 6. At the hearing that took place on June 2, 1992,
20 there was no mention of the "broken promise" explanation.
21 "Respondent's Group Exhibit 1" does not mention any
22 representation by Respondent regarding anticipated refunds from
23 First National. Respondent was placed under oath and testified
24 as a witness in the June 2, 1992 hearing. When asked for an
25 explanation for the refunds he made, Respondent testified that
26 he could not remember back that far and that he had signed some
27 blank checks that were later filled in by his clerical staff.
28 We find that had Respondent made the refunds to make good on a

1 "broken promise", there would have been some mention of it at
2 the hearing on June 2, 1992.

3 7. According to the supplemental affidavits,
4 Respondent advised these individuals that they would be entitled
5 to a refund from First National and that when First National
6 refused to make the refund, he felt obligated to make the refund
7 himself. Evidence presented at the hearing shows that the
8 refunds in question were made over a four-month period between
9 April and September 1990. The refunds were made either on the
10 same day the applications were taken or within a few days of the
11 applications. If in fact Respondent learned in April 1990 that
12 First National would not refund the premium and Respondent felt
13 obligated to make the refund himself at that time, Respondent
14 would have no reason to advise nine other people over the next
15 four months that they would be entitled to a refund from First
16 National. We find that Respondent did not make refunds to the
17 ten individuals identified in the notice of hearing to "make
18 good on his promise" as stated in the affidavits.

19 8. The second issue on remand was the response of
20 witness Jerry E. Ditzel to the question of whether the New
21 York Insurance Department found he committed forgery. At the
22 hearing on June 17, 1993, Respondent was permitted to ask
23 Ditzel this question, and Ditzel responded "no". Pursuant
24 to Judge Sticht's order, no additional evidence was needed on
25 this issue because Respondent could not have impeached Ditzel
26 by any evidence from the New York Insurance Department.

27 9. Even in the absence of Judge Sticht's clear
28 directive, the documentation offered by Respondent as

1 "Respondent's Exhibit 4" would not be admissible as any kind of
2 finding against Ditzel. "Respondent's Exhibit 4" consists of
3 correspondence between the New York Insurance Department and
4 Ditzel. "Respondent's Exhibit 4" does not contain anything
5 which even purports to be any kind of finding or conclusion
6 regarding Ditzel. For this reason, and because of Judge
7 Sticht's express order, "Respondent's Exhibit 4" was not
8 admitted.

9 10. In light of the newly admitted evidence and
10 testimony, we have reviewed the entire record in this matter and
11 the Order that was issued on June 16, 1993. We find that the
12 findings of fact and conclusions of law in the Order are fully
13 supported by law and by fact, and that the additional testimony
14 and evidence provided at the hearing on June 17, 1993 add
15 further support to those findings and conclusions.

16 11. We have also reviewed the sanction imposed by the
17 Order - revocation of Respondent's insurance licenses and
18 imposition of a \$5,000 penalty. As stated in the findings of
19 fact and conclusions of law, Respondent knowingly paid rebates
20 of premiums in violation of A.R.S. §20-449. Respondent, while
21 not admitting any violation occurred, seeks to characterize such
22 violations as technical or trivial.

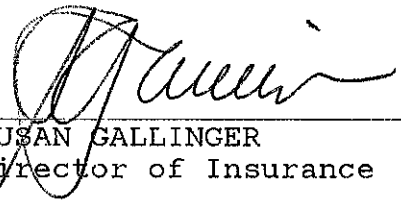
23 While we acknowledge that there was no direct harm to
24 policyholders from Respondent's practice, the Arizona
25 legislature, in enacting A.R.S. §20-449 as well as the other
26 prohibited trade practices provisions, has determined that
27 rebating is prohibited conduct which should be sanctioned.
28 Respondent's continued practice of rebating, even after he was

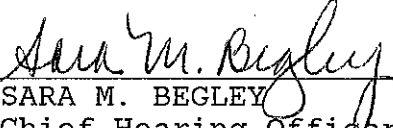
1 cautioned by First National that such practice was prohibited,
2 shows a conscious disregard for the insurance laws of the State
3 of Arizona.

4 12. For the foregoing reasons, the Director's Order
5 of June 16, 1992 is affirmed. The penalty provision is modified
6 to require payment of the civil penalty on or before August 1,
7 1993.

8 13. The aggrieved party may request a rehearing with
9 respect to this Order by filing a written petition with the
10 Hearing Officer within 30 days of the date of this Order,
11 setting forth the basis for such relief pursuant to A.A.C.
12 R4-14-114(B).

13 DATED this 28th day of June, 1993.

14 
15 _____
16 SUSAN GALLINGER
17 Director of Insurance

18 
19 _____
20 SARA M. BEGLEY
21 Chief Hearing Officer

22 COPY of the foregoing mailed/delivered
23 this 28th day of June, 1993, to:

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