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STATE OF ARIZONA

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DEPARTMENT OF INSURANCE

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By	171	INSURANCE

In the Matter of

Docket No. 7789

ROBERT CLARK BRANDENBURG, dba BRANDENBURG & ASSOCIATES,

ORDER

Respondent.

On September 9, 1992, a hearing was held in the above-referenced matter. Respondent was present in person and through counsel, Greg Clark, Esq. The Department was represented by Assistant Attorney General Kathryn Leonard, Esq. The record in this matter was held open pending receipt of additional documents from Respondent. These documents were received on September 25, 1992 and the matter was taken under advisement as of that date.

Based upon the foregoing, we find as follows:

FINDINGS OF FACT

- 1. Notice of this hearing was mailed to Respondent at his address of last record.
- 2. Respondent is presently, and was at all material times, licensed as a life and disability, variable annuity insurance agent and a property and casualty broker in the State of Arizona (license number 0145361).
- 3. On or about September 12, 1990, the Arizona Corporation Commission (the "Commission") issued a Notice of Opportunity for Hearing Regarding Proposed Order to Cease and Desist (the "Notice") In the Matter of the Offering of Securities By: Robert C. Brandenburg, CRD #1171044, et al., Docket No. S-2618-I. The Notice alleges that Respondent offered

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 for sale and sold unregistered securities and violated the antifraud provisions of A.R.S. §44-1991 in connection with a series of investment programs involving the breeding and racing of greyhound dogs.

- 4. On or about September 9, 1991, the Commission entered an Opinion and Order In the Matter of the Offering of Securities By: Robert C. Brandenburg, CRD #1171044, et al.,
 Docket No. S-2618-I, Decision No. 57546, finding that Respondent offered for sale and sold unregistered securities and violated the antifraud provisions of A.R.S. §44-1991 in connection with a series of investment programs involving the breeding and racing of greyhound dogs. Subsequently, the Commission ordered Respondent and others to cease and desist from the above-described activities. Respondent was ordered to make restitution within six months from the date of the Order to investors in the amount of \$70,000 subject to any legal offsets for repayments made prior to the Order. Respondent was also ordered to pay a civil penalty in the amount of \$3,000.00 with payments to be made within 7 months of the entry of the Decision.
- 5. On or about September 18, 1991, Respondent filed a Motion for Modification of Opinion and Order entered by the Commission on September 9, 1991.
- 6. On or about November 6, 1991, the Commission entered an Order On Rehearing In the Matter of the Offering of Securities By: Robert C. Brandenburg, CRD #1171044, et al., Docket No. S-2618-I, Decision No. 57593, denying Respondent's Motion for Modification of Opinion and Order.

Notice of Opportunity for Hearing Regarding Proposed Revocation of Salesman Registration (the "Notice") In the Matter of the Offering of Securities By: Robert C. Brandenburg, CRD #1171044, Docket No. S-2905-I. The Notice alleges that on March 27, 1992, the Securities Division issued Respondent a salesman registration, which was conditioned upon Respondent making restitution and paying civil penalties pursuant to the Commission's Opinion and Order In the Matter of the Offering of Securities By: Robert C. Brandenburg, CRD #1171044, et al., Docket No. S-2618-I, Decision No. 57546. The Notice also alleges that restitution in the Commission's Opinion and Order was to be paid by May 6, 1992 and the penalty was to be paid by June 6, 1992, and that at as of May 19, 1992, Respondent had not made restitution and as of June 15, 1992, Respondent had not paid any part of the \$3,000.00 penalty.

On or about June 15, 1992, the Commission issued a

- 8. The \$3,000.00 administrative penalty was paid by Respondent on July 9, 1992.
- 9. On August 26, 1992, Respondent entered into a consent order with the Commission in In the Matter of the Offering of Securities By: Robert C. Brandenburg, CRD #1171044, Docket No. S-2905-I, Decision No. 57984 (the "Consent Order"). Under the terms of the consent order, Respondent's registration as a securities salesman was suspended for a period of 30 days. Respondent was further ordered to make restitution to specified investors in specified amounts in accordance with a specified payment schedule.

 It was further ordered that the total amount of restitution may be reduced upon verification to the satisfaction of the Securities Division of the Arizona Corporation Commission that certain investors wish to knowingly and voluntarily waive their right to restitution. Some of the investors have filed such waivers.

It was further ordered that Respondent's failure to make a scheduled restitution payment will cause Respondent's security salesman's license to be automatically revoked without notice and hearing.

- 10. The Commission did not find that Respondent knowingly or intentionally violated the securities laws.

 Rather, it appears that all of the violations stemmed from Respondent's erroneous conclusion that the Par Three investments were not securities. However, the Commission did conclude as a matter of law that all of the respondents violated the antifraud provisions of the Securities Act by failing to inform investors about the risks involved and the financial condition and disciplinary history of the principals by failing to provide investors with a prospectus and by misrepresenting to investors that they could have their investment refunded upon demand.
- 11. Respondent continues to be licensed as a securities salesman despite the violation of securities laws.
- 12. Respondent does not pose a threat to the public as a licensed insurance agent.

CONCLUSIONS OF LAW

1. The Director has jurisdiction in this matter pursuant to A.R.S. §20-142.

- 2. Notice of this hearing was proper pursuant to A.R.S. §§41-1061 and 20-163.
- 3. Respondent has a record of dishonesty in business or financial matters within the meaning of A.R.S. §20-290(B)(2).
- 4. Based upon the record in this matter, we find that the Director has discretion to determine what action, if any, to take.

IT IS HEREBY ORDERED that the Department's request for relief is denied.

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

DATED this 19th day of Ogtober, 1992.

SUSAN GALLINGER

Director of Insurance

SARA M. BEGLEY ()
Chief Hearing Officer

COPY of the foregoing mailed/delivered this 19th day of October, 1992, to:

Kathryn Leonard, Esq. Assistant Attorney General 1275 W. Washington Phoenix, Arizona 85007

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5 6	Robert C. Brandenburg 5415 E. Cortez Avenue Scottsdale, Arizona 85254
7 8	Brandenburg & Associates 4430 N. Civic Center Plaza Scottsdale, Arizona 85251
9 10	Jackson National Life Insurance Company P.O. Box 24068 Lansing, Michigan 48909
11 12	Security Benefit Life Insurance Company 700 Harrison Street Topeka, Kansas 66636-0001
13 14	Life Investors Insurance Company of America 4333 Edgewood Road NE Cedar Rapids, Iowa 52499
15 16	Anchor National Life Insurance Company 11601 Wilshire Blvd., 10th Floor Los Angeles, CA 90025-1748
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