

1 recommendations, the Director makes the following Findings of
2 Fact, Conclusions of Law and enters the following Order:

3 FINDINGS OF FACT

4 1. At all times material to this matter, First Rate
5 Insurance, Inc. ("First Rate") was an Arizona corporation
6 authorized to transact business in the State of Arizona.

7 2. At all times material to this matter, First Rate
8 was licensed as a property and casualty agent and broker by the
9 State of Arizona, license no. 0688676. First Rate's property and
10 casualty agent and broker licenses expired on August 31, 1994.

11 3. At all times material to this matter, Ditchey was
12 licensed as a property and casualty agent and broker by the State
13 of Arizona, license no. 644500. Ditchey's property and casualty
14 broker's license expired on May 31, 1994. Administrative notice
15 was taken of Ditchey's licensing record with the Department which
16 revealed that: a) Ditchey's property and casualty license was
17 renewed on May 31, 1994 and will expire on May 31, 1996; and b)
18 Ditchey's life and disability agent's license will expire on May
19 31, 1995.

20 4. At all times material to this matter, Chmiel was
21 and is licensed as a property and casualty agent by the State of
22 Arizona, license no. 670592. Chmiel's property and casualty
23 license will expire on December 31, 1994.

24 5. At all times material to this matter, Ditchey and
25 Chmiel were officers and directors of First Rate.

26 6. At all times material to this matter, First Rate
27 maintained a policy of not notifying insureds that they were owed
28 premium refunds. Such refunds were only provided to insureds

1 upon their contacting First Rate to obtain their premium refund.
2 First Rate's policy was to hold premium refunds until insureds
3 complained to First Rate.

4 7. At all times material to this matter, Chmiel and
5 Ditchey owned and operated First Rate and failed to manage or
6 control the activities of First Rate's employees such as allowing
7 and participating in the charging of arbitrary agency fees; not
8 reconciling accounts of insureds whose insurance carriers bill
9 the insureds through the insurance agency; allowing a
10 non-licensed employee to sign Ditchey's name as agent of record
11 on insurance applications, failing to notify insureds of premium
12 refunds; and providing premium refunds to insureds only after the
13 insureds complained to First Rate that they had not received
14 their premium refunds.

15 8. Between April 1, 1993 and October 28, 1993, First
16 Rate collected at least \$1,686 in "agency fees" from
17 approximately 96 insureds. The fees ranged from \$8 to \$47 with
18 the average agency fee being \$17.56.

19 9. First Rate failed to disclose to insureds the
20 services for which the agency fee was being charged.

21 10. Respondents did not produce any accounting or
22 justification as to the relationship of the fees charged to any
23 expenses actually incurred by First Rate in servicing insurance
24 policies.

25 11. Respondents did not produce credible evidence of
26 any extraordinary services which Respondents provided to the
27 insureds that could be attributed to the agency fees charged to
28 the 96 policyholders in question.

1 12. Respondents Ditchey and Chmiel deposited the
2 agency fees into First Rate's bank account with Bank of America.

3 13. There were no written documents provided to the
4 insureds disclosing the services charged to insureds other than
5 the amount of the fee being charged. Sometimes insureds would be
6 told of the services for which the agency fee was charged and
7 other times there would be no such disclosure to insureds.

8 14. First Rate tried to eliminate month-to-month
9 policies by having higher agency fees charged to the
10 month-to-month insureds.

11 15. Agency fees collected from insureds were used to
12 pay the cost of labor, rent, copy machine and overhead of First
13 Rate.

14 16. Ditchey sought a consensus within First Rate that
15 a \$10 agency fee should be charged to insureds. No final
16 decision within First Rate was ever reached as to the agency fee
17 amount that should be charged to insureds.

18 17. No credible evidence was presented at the hearing
19 of this matter as to why the 96 insureds whose names appear on
20 the attached Appendix were charged agency fees.

21 18. On October 10, 1990, an automobile insurance
22 application was completed for Felix Guimoye. The producer's
23 signature on that application appears to have Ditchey's
24 signature. Ditchey testified that although the signature
25 appeared to be a likeness of his signature, he did not think he
26 signed Mr. Guimoye's application since he was in Texas on October
27 10, 1990, the date when the application was signed.

28

1 19. An insurance application with Allied General
2 Agency, Inc. for Thomas Anderson dated December 15, 1990 appears
3 to have Ditchey's signature. Ditchey testified that the
4 signature on Mr. Anderson's application appeared to be his
5 signature but that he did not think he signed that application.

6 20. An insurance application with Old Hickory Casualty
7 Insurance Company for Thomas Anderson dated October 15, 1990
8 appears to have Ditchey's signature. Ditchey testified that he
9 did not sign that application and does not know who did.

10 21. Between October, 1990 and October 15, 1991,
11 insurance applications were forwarded from First Rate to insurers
12 bearing a signature purported to be that of Ditchey as agent of
13 record.

14 22. On at least one occasion Chmiel witnessed Cassidy
15 Ditchey, wife of Respondent Robert L. Ditchey, II, sign an
16 insurance application.

17 23. Michele Capello, a former employee of First Rate,
18 had informed Arnold Sniegowski that while she was employed at
19 First Rate she had seen Cassidy Ditchey sign insurance policy
20 applications on a daily basis and return those applications to
21 Ditchey for processing.

22 24. George Goodall gave a statement under oath to the
23 Department that Cassidy Ditchey was signing insurance
24 applications daily while Cassidy Ditchey was not a licensed
25 insurance agent with the Arizona Department of Insurance.

26 25. At the hearing, Mr. Goodall had his recollection
27 refreshed with regard to the statement he made to Investigator
28 Sniegowski and testified that the number of times he had ever

1 seen Cassidy Ditchey sign insurance applications was somewhere
2 between one to five times.

3 26. On March 2, 1994, Chmiel stated in a sworn
4 statement to Investigator Sniegowski that his residential address
5 was 2900 W. Highland, Apt. 261, Chandler 85224. The address of
6 record which the Department had in regard to Chmiel's residence
7 was 6707 S. Hardy, #210, Tempe, AZ 85283.

8 27. On March 2, 1994, in an interview with
9 Investigator Arnold Sniegowski, Ditchey stated that his
10 residential address was 6105 E. Acoma, Scottsdale, AZ 85254. The
11 address of record which the Department had in regard to Ditchey's
12 residence was 8001 E. Del Tiburon, Scottsdale, AZ 85258.

13 28. The Department presented at the hearing a
14 reconciliation statement of First Rate's accounts as evidence to
15 support the allegations that Respondents failed to forward
16 premium refunds to at least 57 insureds and withheld funds
17 totalling \$4,741.65. At the hearing, testimony of several
18 witnesses including Jeff Arnold and Investigator Arnold
19 Sniegowski showed that the reconciliation statement was
20 unreliable and, as such, was disregarded.

21 29. The record of this matter remained open for thirty
22 days after the hearing for the purpose of allowing the
23 Respondents and the Department to submit written Closing
24 Arguments and reconciliation statements of the First Rate
25 accounts in question. On December 2, 1994, Respondents submitted
26 Closing Arguments but did not submit any reconciliation
27 statements. On December 2, 1994, the Department submitted its
28 Closing Argument and a reconciliation statement.

1 the attached Appendix constitutes the misrepresentation of the
2 terms of any policy issued or to be issued or the benefits or
3 advantages promised, in violation of A.R.S. §20-443(1).

4 5. The conduct of Respondents First Rate, Chmiel and
5 Ditchey in collecting agency fees from insureds as set forth in
6 the attached Appendix constitutes misrepresentation to the
7 insureds for the purpose of inducing or tending to induce such
8 insureds to lapse, forfeit, surrender, retain or convert any
9 insurance policy in violation of A.R.S. §20-443(5).

10 6. The conduct of Respondents First Rate, Chmiel and
11 Ditchey in failing to perform and maintain reconciliations of the
12 accounts of insureds constitutes a failure to keep the usual and
13 customary records pertaining to transactions under an agent's or
14 broker's license in violation of A.R.S. §20-302(C).

15 7. The conduct of Respondents First Rate, Chmiel and
16 Ditchey in failing to reconcile accounts of insureds and
17 maintaining a policy of not notifying insureds of their premium
18 refunds and not issuing the refunds until an insured complained
19 to First Rate constitutes misappropriation or conversion or
20 illegal withholdings of monies belonging to policyholders,
21 insurers, beneficiaries or others of funds for their own use
22 within the meaning of A.R.S. §20-316(A)(4).

23 8. The conduct of Respondents Chmiel and Ditchey
24 constitutes a failure to notify the Department of a change of
25 address, in violation of A.R.S. §20-313.

26 9. Grounds exist to suspend, revoke or refuse to
27 renew the insurance licenses of Respondents First Rate, Chmiel
28 and Ditchey, to impose a civil penalty upon Respondents First

1 Rate, Chmiel and Ditchey and order restitution, pursuant to
2 A.R.S. §§20-316(A) and 20-316(C).

3 ORDER

4 IT IS ORDERED that

5 1. All insurance licenses issued to First Rate
6 Insurance, Inc., Kevin R. Chmiel and Robert L. Ditchey, II, are
7 revoked effective immediately.

8 2. First Rate Insurance, Inc., Kevin R. Chmiel and
9 Robert L. Ditchey, II, shall cease and desist from violating the
10 provisions of A.R.S. §§20-443.01, 20-443(5) and 20-443(1).

11 3. First Rate Insurance, Inc., Kevin R. Chmiel and
12 Robert L. Ditchey, II, are jointly and severally liable to the
13 insureds identified in the attached Appendix for restitution in
14 the amounts set forth in the Appendix. The Respondents shall pay
15 restitution to those individuals within 20 days of the date of
16 this Order and file proof of such payment with the Department
17 within 30 days of the date of this Order.

18 4. Pursuant to A.R.S. §20-316, First Rate Insurance,
19 Inc. shall pay a civil penalty to the Arizona Department of
20 Insurance in the amount of \$2,500 within 20 days of the date of
21 this Order.

22 6. Pursuant to A.R.S. §20-316, Kevin R. Chmiel shall
23 pay a civil penalty to the Arizona Department of Insurance in the
24 amount of \$2,500 within 20 days of the date of this Order.

25 7. Pursuant to A.R.S. §20-316, Robert L. Ditchey, II,
26 shall pay a civil penalty in the amount of \$2,500 within 20 days
27 of the date of this Order.

- 1 Kevin Chmiel
2 2900 W. Highland, #261
3 Chandler, AZ 85224
- 4 Kevin Chmiel
5 14018 Shirley
6 Omaha, NE 68144
- 7 Century-National Insurance Company
8 P.O. Box 3999
9 North Hollywood, CA 91609
- 10 Midland Risk Insurance Company
11 825 Crossover Lane, #112
12 Memphis, TN 38117-4936
- 13 Prestige Casualty Company
14 5454 W. Fargo Ave.
15 Skokie, IL 60077
- 16 Coronet Insurance Company
17 c/o Insurance Service Underwriters
18 8723 E. Via De Commercio
19 Scottsdale, AZ 85258
- 20 Phoenix Indemnity Insurance Company
21 P.O. Box 52166
22 Phoenix, AZ 85072
- 23 Safeway Insurance Company
24 500 S. Racine Ave.
25 Chicago, IL 60607
- 26 Mark Weight
27 Emerald Finance Company
28 1750 S. Mesa Dr., #100
Mesa, AZ 85210
- 29 Jeff Arnold
30 Western Pacific Insurance
31 5700 East Broadway
32 Tucson, AZ 85711

33 
34 Chris Crawford

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- 36
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Appendix

	Insured's Name	Invoice Number	Date Received	Amount Received
1	Akin, Marie	15802	10/8/93	20.00
2	Alba, Jose	8881	8/23/93	30.00
3	Ambrosues, Joseph	8647	7/12/93	10.00
4	Armentas, Martha	9332	10/19/93	10.00
5	Avey, Matt	8871	8/23/93	20.00
6	Bicer, Sakif	9234	9/30/93	10.00
7	Biglow, Rayshell		4/1/93	10.00
8	Birch, Theron	15723	9/25/93	10.00
9	Boildena, Joseph A.	15817	10/1/93	15.00
10	Boudly, Howard	9379	10/27/93	10.00
11	Brice, Trina	9204	9/24/93	10.00
12	Broadbent, Christina	8673	7/16/93	20.00
13	Brown, Devin	9146	9/14/93	10.00
14	Burda, Margaret	8700	7/23/93	20.00
15	Cadwell, John P.	9290	10/12/93	10.00
16	Camargo, Fausto	8787	8/9/93	30.00
17	Carrasco, Ramon	8748	7/30/93	20.00
18	Cassandra Lee Apt.	8621	7/17/93	10.00
19	Christie, Michael	8817	8/13/93	10.00
20	Coleman, Kimberley	9293	10/12/93	10.00
21	Cox, Glen	8678	7/19/93	10.00
22	Dare II, Albert	9254	10/4/93	25.00
23	Deisher, Crystal	8908	8/27/93	30.00
24	DeJarretta, Terry	8873	8/23/93	20.00
25	Deltors Sr., Gervaso	9186	9/22/93	30.00
26	Devlin, Mike	8960	9/7/93	20.00
27	Duet, Mary	8919	8/30/93	20.00
28	Eaves, Brad	8688	7/21/93	20.00
29	Estell, Chris & Amy	15771	10/2/93	8.00
30	Fakhrai, Arezoo	8620	7/7/93	10.00
31	Garcia, Philippe	9242	10/1/93	25.00
32	Gosch, Debra	9163	9/17/93	10.00
33	Hardy, Lisa Ann	15234	7/6/93	10.00
34	Heio, Bard	15243	7/6/93	10.00
35	Hessetine, Cheryl	8755	7/30/93	10.00
36	Hicks, Gregg	8607	7/6/93	10.00
37	Jackson, Terry	9252	10/4/93	25.00
38	Johnson, Athena	9313	10/15/93	35.00
39	Jones, David	8687	7/2/93	20.00
40	Juarez, Luis	8738	7/28/93	20.00
41	Kastner, Walter B.	9241	10/1/93	10.00
42	Keller, Diane	15844	10/15/93	10.00
43	Kiersztyn, Scott	9319	10/16/93	20.00
44	Krawczyk, John	8809	8/11/93	30.00
45	Krukow, Mamuela	8692	7/21/93	20.00
46	Lara, Dionicio B.	8572	6/29/93	10.00
47	Lee, Jack	8966	9/8/93	10.00
48	Lewis, Evalena	9191	9/23/93	35.00
49	Livingston, Pamela	8710	7/24/93	13.00
50	Lu, Hiu	9167	9/7/93	10.00
51	Lugo, Raul	8698	7/22/93	20.00

Appendix

	Insured's Name	Invoice Number	Date Received	Amount Received
52	Lyonslines, Wade	8614	7/6/93	10.00
53	Manno, Stephan	8745	8/30/93	20.00
54	Marshall, Natalie	8602	7/6/93	10.00
55	Martinez, Arnie	290	6/30/93	10.00
56	McCollum, Bobbie	9295	10/12/93	20.00
57	Meehan, Kathy	8779	8/6/93	20.00
58	Miller, Richard	8984	9/10/93	10.00
59	Mills, Jim	8815	8/12/93	20.00
60	Miner, Jeff	8625	7/8/93	20.00
61	Moghalam, Mehri L.	15824	10/12/93	35.00
62	Morgan, Kathy	8542	6/21/93	20.00
63	Nare, Jeremy	8609	7/16/93	10.00
64	Nelson, Michelle	8693	7/21/93	20.00
65	O'Connell, Mike	9330	10/19/93	10.00
66	Oregel, Jose	9222	9/29/93	25.00
67	Padilla, Wanda	9238	10/1/93	47.00
68	Pan, Gang	8896	8/26/93	30.00
69	Parness, Tamara	9247	10/2/93	10.00
70	Pesti, Zoltan	8899	6/25/93	22.00
71	Pettett, Galt	8875	8/25/93	21.00
72	Pizarro II, George	294	7/1/93	10.00
73	Quick, Holly	8682	7/20/93	20.00
74	Reed, Scott	8541	6/21/93	10.00
75	Rodney, Joshua	9149	9/15/93	35.00
76	Rodriguez, Luis	8788	8/9/93	20.00
77	Romero, Ava	8893	8/26/93	20.00
78	Rono, Margarito	8730	7/28/93	20.00
79	Rowley, Clark	8627	7/8/93	10.00
80	Rowley, Clark	9348	10/22/93	10.00
81	Ruan, Rosa R.	8781	8/9/93	10.00
82	Sabato, Junko	9288	10/11/93	20.00
83	Sanderson, Jay	8956	9/7/93	30.00
84	Sandfort, Rabecca	9342	10/21/93	15.00
85	Scheck, Joseph R.	9380	10/28/93	25.00
86	Shostaki, David	8759	8/2/93	30.00
87	Spelman, Forrest	8898	8/26/93	30.00
88	Taylor, Alison	8605	7/7/93	10.00
89	Titus, Ama	15745	9/28/93	10.00
90	Towles, Edward	8728	7/28/93	20.00
91	Uarsheng, Shen	8599	7/2/93	10.00
92	Valenzuela, Steven	9352	10/22/93	20.00
93	Vasquez, Caroline	9256	10/4/93	10.00
94	Vasquez, Maria C.	8753	7/30/93	20.00
95	Weiburg, Daro	15225	7/3/93	10.00
96	Yap, Angela	8765	8/3/93	20.00
			TOTAL	\$1,686.00