

APR 13 1995

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

DEPARTMENT OF INSURANCE
By

In the Matter of)	Docket No. 8654
)	
WILLIAM T. CHOWN,)	ORDER
)	
Applicant.)	
_____)	

On March 20, 1995, a hearing took place in this matter. Assistant Attorney General Kathryn Leonard appeared on behalf of the Arizona Department of Insurance ("Department"). Applicant William T. Chown ("Mr. Chown") appeared in person and through counsel, Keith M. Knowlton.

Based upon the entire record, including all pleadings, motions, testimony, and exhibits admitted during the hearing, Administrative Law Judge Gregory Y. Harris has prepared the following Findings of Fact, Conclusions of Law, and Order for consideration and approval by the Director of the Arizona Department of Insurance (the "Director"). The Director adopts and enters the following Findings of Fact, Conclusions of Law and enters the following Order:

FINDINGS OF FACT

1. On November 11, 1994, Mr. Chown filed an application for a life and disability insurance agent license (the "Application") with the Department.

2. On December 14, 1994, the Department denied the Application. Mr. Chown filed a timely request for hearing on December 17, 1994.

3. In this proceeding, Mr. Chown had the burden of

1 proof to demonstrate his qualification to have the Application
2 granted and for the issuance of an insurance license.

3 4. In the Application, Mr. Chown disclosed that he
4 had an insurance, securities, or other license by a public
5 authority of any jurisdiction suspended or revoked, that he had
6 an agency contract terminated by an insurance company or managing
7 general agent for any alleged cause, and that he was presently
8 indebted to an insurer or insurance company or managing general
9 agent.

10 5. On August 15, 1994, the Oregon Department of
11 Consumer and Business Services, Insurance Division entered a
12 Stipulation and Final Order against Mr. Chown. In the Matter of
13 William T. Chown, Case No. INS 93-03-035 ("The Oregon Action").
14 In the Oregon Action, the Oregon Administrator of Insurance
15 suspended the insurance license of Mr. Chown from September 1,
16 1993 until February 28, 1994 based on findings of fact and
17 conclusions of law that Mr. Chown illegally withheld money
18 received in the conduct of business under his insurance license
19 and belonging to a policyholder and/or insurer in violation of
20 Oregon Revised Statute 744.013(2)(d).

21 6. The facts underlying the Oregon Action
22 demonstrated that Mr. Chown had submitted an application for
23 insurance coverage for Ethel Bertelsen (the "Insured"), with whom
24 Mr. Chown previously had dealt when he worked at an insurance
25 agency operated by Bruce Woolridge.

26 7. The new coverage sought by the Insured through Mr.
27 Chown had a premium of \$3,845.00. Mr. Chown forwarded \$1,538.00,
28 the net premium, to the insurer, Mutual Protective Insurance

1 Company ("Mutual"). Mr. Chown retained the balance of the
2 premium as his commission, to which he would have been entitled
3 if the application had been approved by Mutual.

4 8. When Mr. Chown received the premium payment from
5 the Insured to obtain a policy from Mutual, Mr. Chown transacted
6 insurance through an agency known as AIM.

7 9. Approximately one month after Mr. Chown submitted
8 the application, Mutual rejected the application submitted by Mr.
9 Chown on behalf of the Insured. When Mutual informed Mr. Chown
10 in writing that the Insured's application for coverage had been
11 denied, Mutual returned the net premium to Mr. Chown and
12 instructed Mr. Chown to return both the net premium and the
13 commission he had retained to the Insured.

14 10. The vice-president and assistant general counsel
15 for Mutual, Don Peeler, testified that Mr. Chown acted properly
16 when he forwarded the net premium to the insurer while retaining
17 the balance as commission on the application. Mr. Chown had the
18 right to keep commissions payable on the policy he had attempted
19 to sell to the Insured, subject to his duty to return the entire
20 premium, including the commission, if Mutual refused to issue the
21 policy. When Mutual rejected the application, Mr. Chown had the
22 obligation to return the entire premium to the Insured.

23 11. Mr. Chown did not have sufficient funds in the
24 trust account Oregon law required that he maintain to return to
25 the Insured the commission portion of the premium he had
26 retained. Further, he used the net premium Mutual had returned
27 to satisfy other demands he faced rather than return all or even
28 a portion of the premium to the Insured. Thus, instead of

1 delivering the money entrusted to him by Mutual to the Insured,
2 Mr. Chown illegally withheld the premium. Oregon Action, page 2,
3 lines 16-19.

4 12. On September 22, 1992, the Insured contacted
5 Mutual to determine the status of the premium payment delivered
6 to Mr. Chown. On September 23, 1992, Mutual received information
7 concerning Mr. Chown's failure to refund any portion of the
8 premium to the Insured. As a consequence, Mutual repaid the
9 Insured the \$3,845.00 premium payment. In turn, AIM reimbursed
10 Mutual this amount.

11 13. On March 29, 1993, the Oregon Department initiated
12 the Oregon Action. On February 28, 1994, the Oregon resident
13 insurance agent license held by Mr. Chown expired.

14 14. The Oregon Action concluded on August 15, 1994,
15 with the Oregon Commissioner's entry of the stipulated order to
16 which Mr. Chown consented with the imposition of a retroactive
17 suspension of the Oregon resident insurance license held by Mr.
18 Chown from September 1, 1993 through February 28, 1994.
19 Information placed in the record at the hearing established two
20 reasons for the retroactive suspension: a) the resident
21 insurance license held by Mr. Chown expired on February 28, 1994
22 and had not been renewed. Mr. Chown did not renew this license,
23 nor has he held an Oregon insurance license since February 28,
24 1994. b) Mr. Chown moved to Arizona in October 1993, which made
25 him ineligible to continue to hold a resident Oregon insurance
26 license.

27 15. The terms of the order entered in the Oregon
28 Action also included the direction that Mr. Chown repay the

1 \$3,845.00 paid to the Insured and to Mutual. Mr. Chown has not
2 repaid this amount. The Oregon Action provided that if Mr. Chown
3 were to reapply for licensure in Oregon, the issuance of a new
4 license would be conditioned upon Mr. Chown's timely repayment of
5 this obligation.

6 16. On February 22, 1994, Mr. Chown signed an
7 agreement with AIM to repay the money advanced by AIM to repay
8 the Insured and Mutual the premium withheld by Mr. Chown. This
9 agreement provided that Mr. Chown would repay \$4,345.00 to AIM.
10 To date, a total of \$951.22 has been credited toward this
11 obligation. All money credited toward the satisfaction of this
12 obligation has been derived from commissions generated from the
13 renewal of insurance policies previously sold by Mr. Chown. No
14 other payments have been made by Mr. Chown since his receipt of
15 the premium from the Insured in July 1992, premium he should have
16 returned to the Insured in August 1992.

17 17. Mr. Chown remains indebted to AIM to pay the
18 obligation arising from the funds advanced by AIM in connection
19 with Mutual's issuance of a refund to the Insured.

20 18. Mr. Chown urges that he did not withhold funds
21 improperly. In support of this claim, he contends that Mutual's
22 return of the premium to the Insured undercuts the claim that he
23 withheld funds. Mr. Chown's argument is rejected for two
24 reasons.

25 a. First, Mr. Chown stipulated in the Oregon
26 Action that "Chown illegally withheld money received in the
27 conduct of business under his insurance license and belonging to
28

1 [the Insured] or Mutual Protective." This stipulated finding
2 will not be relitigated in this proceeding.

3 b. Second, the statutory provision under which
4 the Director may exercise discretion to deny an application
5 applies with equal force to money withheld from "policyholders,
6 insurers, beneficiaries or others and received in the conduct of
7 business in this state or elsewhere." A.R.S. §20-290(B)(3).
8 Mutual may have satisfied Mr. Chown's obligation to the Insured,
9 and AIM may have satisfied Mr. Chown's obligation to Mutual, but
10 Mr. Chown remains indebted to AIM because of the money he
11 withheld. Further, Mr. Chown's hearing testimony failed to
12 explain his failure to return the premium, including the net
13 premium, to the Insured.

14 19. Mr. Chown urges that the refusal to issue the
15 requested license on account of the disciplinary action taken
16 against him in the Oregon Action constitutes a violation of his
17 constitutional rights. The Director has extremely limited
18 authority to consider constitutional questions. Nevertheless,
19 the Director has considered and rejected this argument.

20 20. The Director owes a duty to the people of this
21 state to ensure that only qualified, competent, and reliable
22 people receive the license privilege. Evidence of the acts
23 committed by the holder of an insurance license in another
24 jurisdiction represents a valuable and important gauge to assess
25 how a person will exercise the license privilege in this state.

26 21. Mr. Chown admits that he withheld a substantial
27 sum of money received directly related to his actions as an
28 insurance agent. The offense Mr. Chown admits having committed

1 in Oregon would have served as a valid basis for action under
2 Arizona law if those acts had been committed in Arizona. Title
3 20 requires the Director to consider these facts. A.R.S.
4 §§20-290(B), 20-291(A).

5 22. The Director therefore rejects Mr. Chown's
6 argument that the constitution prevents consideration of the acts
7 he committed, and the sanctions imposed in the Oregon Action in
8 this licensing determination. The relationship between the
9 offenses, the Oregon Action, and Mr. Chown's fitness to hold an
10 Arizona license all support the conclusion that the Director
11 should and must consider these facts when exercising discretion
12 and reviewing the Application submitted by Mr. Chown.

13 23. Mr. Chown urges that he be issued the license
14 subject to a term of probation to require that he complete the
15 repayment of the obligation owed to AIM. Unlike the authority
16 specifically vested by statute in other agencies, the Legislature
17 has not empowered the Director to issue probationary licenses.
18 See e.g. A.R.S. §32-1239. Thus, the Director does not have the
19 authority to issue probationary or conditional licenses.
20 However, even if the Director had the discretion to issue a
21 probationary license, the facts in this matter do not support the
22 exercise of that discretion in this matter.

23 24. Mr. Chown urges that A.R.S. §20-294(B) permits the
24 Director to issue a license the continued existence of which is
25 conditioned upon Mr. Chown's payment of the money he withheld in
26 Oregon. This statute provides in relevant part that a license
27 issued by the Director
28

1 shall state the name of the licensee, date of issue
2 and expiration, kind or kinds of insurance or
3 subdivisions of insurance covered, if applicable,
and conditions of the license.

4 A.R.S. §20-294(B). When read together with A.R.S. §20-294(A),
5 subsection (B) does not authorize the Director to issue
6 conditional licenses. Instead, this statute addresses the acts
7 to be performed by the Director when issuing a license "to a
8 person qualified for the license in accordance with this
9 article." A.R.S. §20-294(A). As previously stated, Mr. Chown is
10 not a "person qualified for the license in accordance with this
11 article." Id.

12 25. For the reasons previously stated, Mr. Chown
13 failed to prove that he qualifies for the issuance of an
14 insurance license.

15 CONCLUSIONS OF LAW

16 1. Mr. Chown received notice of this proceeding as
17 prescribed by A.R.S. §§20-163 and 41-1061.

18 2. The Director has jurisdiction over this matter
19 pursuant to A.R.S. §§20-142 and 20-290.

20 3. Mr. Chown has a record of dishonesty in business
21 or financial matters within the meaning of A.R.S. §20-290(B)(2).

22 4. Mr. Chown has a record of misappropriation,
23 conversion or irregular withholding by the applicant of monies
24 belonging to policyholders, insurers, beneficiaries or others and
25 received in the conduct of business in this state or elsewhere
26 within the meaning of A.R.S. §20-290(B)(3).

27 5. Mr. Chown has a record of conduct under an
28 insurance license issued in this state or elsewhere showing the

1 applicant to be incompetent or a source of injury and loss to, or
2 repeated complaint by, the public or any insurer within the
3 meaning of A.R.S. §20-290(B)(4).

4 6. Mr. Chown has a record of suspension or revocation
5 of an insurance license in any jurisdiction within the meaning of
6 A.R.S. §20-290(B)(5).

7 7. Conclusions of Law ¶¶3-6 independently and in
8 combination support the result entered in this Order.

9 ORDER

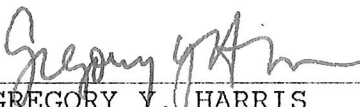
10 IT IS ORDERED:

11 Denying the application for a life and disability
12 insurance agent license submitted by Applicant William T. Chown.

13 EFFECTIVE this 13th day of April, 1995.

14
15 

16 CHRIS HERSTAM
17 Director of Insurance

18 

19 GREGORY Y. HARRIS
20 Chief Administrative Law Judge

21 NOTIFICATION OF RIGHTS

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

26 The final decision of the Director may be appealed to
27 the Superior Court of Maricopa County for judicial review pursuant
28 to A.R.S. §20-166.

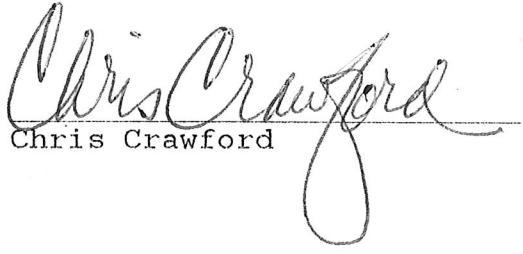
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COPY of the foregoing mailed/delivered
this 13th day of April, 1995, to:

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