

1 3. In the 1994 Applications, the following questions
2 were asked:

3 C. SINCE YOUR LAST APPLICATION OR RENEWAL
4 THEREOF, have you had any professional,
5 vocational, or business license denied,
6 suspended, revoked, restricted, or had a
7 fine imposed by any public authority or have
8 you withdrawn any application for or
9 surrendered any license to avoid any
10 disciplinary action? (emphasis in original)

11 F. ARE ANY criminal, administrative or
12 other judicial or quasi-judicial charges or
13 proceedings currently pending against you IN
14 ANY jurisdiction? (emphasis in original)

15 Mr. Lindsey asked "No" to both questions.

16 4. In April of 1992 and 1990, Lindsey submitted
17 renewal applications to renew the Licenses. The following
18 questions were asked in the 1992 and 1990 renewal applications:

19 Since your last application or renewal
20 thereof, have you had any professional,
21 vocational, or business license denied,
22 suspended, revoked, or restricted, or a fine
23 imposed by any public authority, or
24 withdrawn any application for or surrendered
25 any such license to avoid disciplinary
26 action?

27 Are any criminal, civil, administrative or
28 other judicial or quasi-judicial charges or
29 proceedings currently pending against you in
30 any jurisdiction?

31 Mr. Lindsey answer "No" on all four renewal applications.

32 5. On April 4, 1994, one week before he submitted
33 the 1994 Applications, the South Dakota Department of Commerce
34 and Regulations (the "South Dakota Department") denied Mr.
35 Lindsey's application for insurance licensure pursuant to SDCL
36 58-30-23 and SDCL 58-30-43. The South Dakota Department based
37 the denial on Mr. Lindsey's failure to disclose administrative
38

1 actions taken by four other states against his insurance
2 licenses to the South Dakota Department.

3 6. On December 5, 1991, the State of Nebraska
4 Department of Insurance (the "Nebraska Department") issued a
5 Petition and Notice of Hearing against F. Darrell Lindsey,
6 Respondent, in Cause No. A-976. Mr. Lindsey held a surplus
7 lines insurance agent's license in Nebraska. The Petition
8 alleged that Mr. Lindsey failed to file the required quarterly
9 reports due from all surplus lines licensees in violation of
10 Neb. Rev. Stat. §§ 44-147.03 and 44-2028(1) and (11).

11 7. On January 28, 1992, following a hearing, the
12 Nebraska Department issued Findings of Fact, Conclusions of Law
13 and Order in Case No. A-976. The Nebraska Department found that
14 Mr. Lindsey violated the reporting requirements to which he was
15 subject as a surplus lines licensee. The Nebraska Department
16 ordered Mr. Lindsey to pay a \$300.00 fine and suspended his
17 surplus lines insurance agent's license until he filed all
18 required reports. The Nebraska Department instituted additional
19 proceedings to enforce the Order entered in Case No. A-976 on
20 June 25, 1992. Mr. Lindsey resolved this supplemental
21 proceeding on July 1, 1992.

22 8. On March 9, 1992, the Insurance Division of the
23 State of Iowa (the "Iowa Department") issued a Notice of Hearing
24 In the Matter of the Conduct of F. Darrell Lindsey, No.
25 P57018. The Notice of Hearing alleged that Mr. Lindsey violated
26 Chapter 507B, Code of Iowa, 1991, by submitting to the Iowa
27 Department an application for a nonresident insurance agent's
28 license in which he failed to answer one background question and

1 erroneously answered another question regarding other actions
2 against him. The Notice of Hearing further alleged that this
3 conduct may indicate that Mr. Lindsey lacked the requisite
4 character and competency to act as an insurance agent and the
5 Commissioner may have good cause to decline the issuance of the
6 license.

7 9. On April 10, 1992, following a hearing, the Iowa
8 Department issued an Order concluding that Mr. Lindsey did not
9 fully or truthfully answer the questions concerning his
10 background on the application submitted to the Iowa Department
11 for an agent's license. The Iowa Department concluded further
12 that Mr. Lindsey's actions constituted good cause to reject Mr.
13 Lindsey's application for licensure. The Iowa Department
14 rejected Mr. Lindsey's application for a nonresident insurance
15 agent's license.

16 10. On May 2, 1986, the State of Oregon Department of
17 Commerce, Insurance Division (the "Oregon Department"), issued a
18 Cease and Desist Order in conjunction with a Cease and Desist
19 Order issued that same date against High Country Insurance
20 Agency, Inc., dba The High Country Group In the Matter of the
21 Insurance Practices of F. Darrell Lindsey, Case No. 86-5-2 (the
22 "Oregon C&D").

23 11. Mr. Lindsey held an Oregon nonresident insurance
24 agent's license authorizing him to transact general lines of
25 insurance. Mr. Lindsey never held an Oregon surplus lines
26 agent's license because only Oregon residents or people who
27 maintain an office in Oregon may hold a surplus lines license.
28

1 12. The Oregon C&D stated that Mr. Lindsey's conduct
2 constituted the transaction of insurance on behalf of insurers
3 with which the agent was not appointed to serve within the State
4 of Oregon. The Oregon C&D further stated that Mr. Lindsey's
5 conduct constituted the transaction of insurance within the
6 state of Oregon as an agent for an unauthorized insurer without
7 a surplus lines agent's license. The Oregon C&D alleged that
8 Mr. Lindsey's conduct violated ORS 744.035(1), 744.305 and
9 746.310(1), and ordered Mr. Lindsey to cease and desist from
10 further violations of these statutes. Mr. Lindsey did not
11 challenge the findings of the Oregon C&D in the State of Oregon.

12 13. On June 5, 1986, the Insurance Commissioner for
13 the State of Utah issued an Order to Cease & Desist In the
14 Matter of F. Darrell Lindsey, Rickie J. Lindsey & High Country
15 Insurance Agency, Docket No. 86-40 (the "Utah C&D").

16 14. The Utah C&D arose from the named Respondents'
17 activities under the name of High Country Outdoorsman
18 Association to broker, on an alleged group basis, commercial
19 automobile insurance for outfitters and guides through the
20 United Bus Owners Association.

21 15. The Commissioner concluded that Mr. Lindsey
22 engaged in the following:

23 prohibited business practices such as making
24 available preferred rates or premiums based
 upon a fictitious grouping of an Association;

25 unfairly discriminated against individuals
26 with substantially like risks and exposure
27 factors by requiring them to join High
 Country Outdoorsman Association, Inc.;

28 charged and/or received fees and compensa-
 tion associated in the procurement of

1 insurance which were not included in the
2 premium specified in the policy;

3 knowingly published and/or disseminated
4 false, deceptive or misleading
5 representations relative to the business of
6 insurance;

7 attempted to exercise powers relative to
8 insurance outside the scope of their
9 license; and

10 placed insurance on behalf of individuals
11 and/or organizations outside the State of
12 Utah through a surplus line broker which was
13 only authorized within the State of Utah.

14 16. On July 17, 1986, Respondents entered a
15 Stipulation and Order with the Utah Insurance Department, Docket
16 No. 86-58. Respondents agreed to Stipulations that included
17 conducting their business only with independently governed bona
18 fide associations which exist for purposes other than obtaining
19 insurance and acting in concert with the laws and requirements
20 of Title 31A, Utah Code Annotated. The stipulation provided for
21 the rescission of the Utah C&D dismissed any disciplinary or
22 administrative proceedings previously issued. Mr. Lindsey
23 testified that his resolution of the Utah C&D also resolved the
24 Oregon C&D.

25 17. On January 22, 1979, the Idaho Department of
26 Insurance issued an Administrative Complaint against Mr.
27 Lindsey, a duly licensed non-resident property and casualty and
28 disability insurance agent, Docket No. 363.

18. Count I of the Administrative Complaint alleged
that Mr. Lindsey directly or indirectly acted as an agent for an
unauthorized insurer (Fidelity American Assurance Company) in
the solicitation, negotiation, procurement or effectuation of a

1 group disability insurance policy in violation of Idaho Code §§
2 41-1201 and 1201.

3 19. Count II of the complaint alleged that Mr.
4 Lindsey was not an appointed agent of the unauthorized insurer,
5 and by his solicitation, negotiation, procurement or
6 effectuation of insurance policies, Mr. Lindsey did solicit and
7 place insurance in an insurer as to which he did not hold a
8 subsisting appointment in violation of Idaho Code §§ 41-1030 and
9 1031(1).

10 20. Count III of the complaint alleged that Mr.
11 Lindsey held himself out to be a life insurance agent when, in
12 fact, he was not licensed to conduct life business in Idaho.
13 Finally, under Count IV, Mr. Lindsey engaged in this conduct to
14 avoid the applicable provisions of the Idaho Code.

15 21. On May 2, 1979, the State of Idaho charged Mr.
16 Lindsey with an administrative penalty in the amount of
17 \$1,000.00.

18 22. Mr. Lindsey employs individuals within the scope
19 of his business operation who perform a variety of functions
20 including the screening of mail, the maintenance of files, and
21 the preparation of documents for submission to outside sources,
22 including regulatory officials.

23 DISCUSSION

24 1. The Legislature vested the Director with the
25 discretion to determine the qualifications of an applicant for
26 the issuance or renewal of an insurance license or for a
27 licensee to maintain an insurance license. A.R.S. §20-290(B);
28 see A.R.S. §§20-316(A), 20-316(C) (authorizing the Director to

1 suspend, revoke, or refuse to renew a license or to impose civil
2 penalties against the holder of an insurance license for
3 violations of Title 20).

4 2. For the Director to exercise this discretion,
5 applicants for the issuance or renewal of a license must submit
6 an application to the Director. A.R.S. §20-291. When reviewing
7 an application, the Director must consider:

8 a. The applicant's identity, personal history,
9 business record, experience in insurance, the purpose for which
10 the license is to be used, and "other pertinent facts the
11 Director requires." A.R.S. §20-291(A).

12 b. Whether the applicant has been previously
13 licensed to transact any kind of insurance in this state or
14 elsewhere. A.R.S. §20-291(B)(1).

15 c. Whether the applicant has been previously had
16 a license refused, suspended or revoked. A.R.S. §20-291(B)(2).

17 d. Whether an insurer or general agent claims
18 the applicant is indebted to it. A.R.S. §20-291(B)(3).

19 e. Whether the applicant ever had an agency
20 contract cancelled. A.R.S. §20-291(B)(4).

21 f. Whether the applicant received a passing
22 score on the required licensing examination. A.R.S.
23 §20-291(B)(5).

24 3. After considering these factors, the Director may
25 refuse to accept an application or refuse to issue or renew a
26 license if these or other factors exist that draw into question
27 the applicant's qualifications for license. Under A.R.S.
28

1 §20-316, these factors may also give rise to disciplinary
2 proceedings under Title 20 against the holder of a license:

3 a. Material misrepresentation or fraud in the
4 application for, or attempt to obtain or renew an insurance
5 license. A.R.S. §20-290(B)(1); see A.R.S. §20-316(A)(3).

6 b. A record of dishonesty on the part of the
7 applicant in business or financial matters. A.R.S.
8 §20-290(B)(2);

9 c. A record of misappropriation, conversion or
10 irregular withholding by the applicant of monies belonging to
11 policyholders, insurers, beneficiaries or others and received in
12 the conduct of business in this state or elsewhere. application
13 for, or attempt to obtain or renew an insurance license. A.R.S.
14 §20-290(B)(3); see A.R.S. §20-316(A)(4).

15 d. A record of conduct under an insurance
16 license issued in this state or elsewhere showing that applicant
17 to be incompetent or a source of injury and loss to, or repeated
18 complaints by, the public or any insurer. A.R.S. §20-290(B)(4);
19 see A.R.S. §20-316(A)(7).

20 e. A record of suspension or revocation of an
21 insurance license in any jurisdiction. A.R.S. §20-290(B)(5);
22 see A.R.S. §20-316(A)(5).

23 f. a record of conviction by final judgment of a
24 felony involving moral turpitude. A.R.S. §20-290(B)(6); see
25 A.R.S. §20-316(A)(6).

26 4. Applicants for the issuance or renewal of an
27 insurance license must truthfully, fully, and adequately
28 disclose information on a license or renewal application.

1 A.R.S. §20-316(A)(2). If an applicant for the issuance or
2 renewal of an insurance license fails to disclose background
3 information which falls within the scope of A.R.S. §§20-290(B),
4 20-291(A) and 20-291(B), the non-disclosure serves to hamper,
5 thwart, or prevent the Director from the exercise and discharge
6 of the duty delegated by the Legislature.

7 5. Mr. Lindsey has had an insurance license
8 suspended by the State of Nebraska and had licenses denied by
9 the States of Iowa and South Dakota. The Legislature has
10 instructed the Director to consider these facts and the facts
11 underlying these actions in the course of exercising the
12 judgment and discretion attendant to the licensing process.
13 Mr. Lindsey had the affirmative obligation to truthfully
14 disclose these facts when he submitted his renewal applications
15 to the Director. Significantly, his failure to make these
16 disclosures led to the actions taken by both Iowa and South
17 Dakota.

18 6. To be sure, the Director has the ability to
19 undertake the steps attendant to the performance of conduct
20 background checks of applicants to determine the truth of the
21 information disclosed by the applicant. However, the licensing
22 process can only work well when applicants fully and truthfully
23 answer all questions on the application.

24 7. In this matter, an investigation undertaken
25 following Mr. Lindsey's submission of the renewal application
26 revealed that Mr. Lindsey had failed to reveal a suspension and
27 a fine imposed by the Iowa Department, the denial of license
28 applications by both the South Dakota Department and the

1 Nebraska Department, and the entry of cease and desist orders by
2 the Utah Department and the Oregon Department. Through the
3 discovery of these facts, the question necessarily arises
4 whether Mr. Lindsey, who failed to be honest with the Director,
5 can be expected to be honest in transactions entered into under
6 the License.

7 8. Mr. Lindsey contends that these facts should not
8 provide the basis of the Director's exercise of discretion and
9 judgment because the facts underlying the actions taken by other
10 insurance regulators would not support additional action by the
11 Director in this matter. He further contends that he continues
12 to hold licenses in other jurisdictions in which he has been
13 sanctioned. However, by failing to disclose this information to
14 the Director, Mr. Lindsey usurped the Director's authority, and
15 unilaterally determined the significance of these regulatory
16 actions which the Legislature specifically directed the Director
17 to consider, the effect of which caused the Director to make
18 decisions regarding the license issued to Mr. Lindsey on a less
19 than complete record.

20 9. Mr. Lindsey, as the holder of the License,
21 retains and assumes responsibility for all individuals acting on
22 his behalf, including those performing administrative and
23 clerical functions relating to the preparation of the
24 applications signed by Mr. Lindsey and submitted to the
25 Department to renew the License.

26 10. The legislature has determined that facts
27 relating to whether Mr. Lindsey has ever had a license refused,
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1 suspended, or revoked are material to the licensing process.
2 A.R.S. §§20-290(B)(5), 20-291(B)(2).

3 11. Mr. Lindsey's submission of renewal applications
4 which failed to disclose material information constitute a
5 misrepresentations made in connection with an application to
6 obtain or renew an insurance license. A.R.S. §20-316(A)(3).

7 12. Despite the materiality of Mr. Lindsey's
8 misrepresentations, the Director has discretion to determine the
9 sanction, if any, to be imposed in response to the
10 misrepresentations.

11 13. The material misrepresentations made by Mr.
12 Lindsey, when considered along with the nature of what the
13 respondent failed to reveal, support the conclusion that a
14 sanction should be imposed. At the same time, the sanction
15 should be tempered by the fact that no evidence has been
16 presented that Mr. Lindsey has a disciplinary history with the
17 Department. Nevertheless, the imposition of the sanction
18 follows from the reasons discussed above regarding Mr. Lindsey's
19 obligation to ensure his truthful disclosures of all facts
20 reasonably related to the discretion and judgment which the
21 statutes require the Director to exercise and make.

22 14. Mr. Lindsey urged that this proceeding had not
23 been timely instituted and asked for the dismissal of the
24 matter. In moving for this dismissal of this proceeding, the
25 applicant characterized this as a proceeding brought solely
26 under A.R.S. §20-290 at the applicant's request subject to the
27 time tables set forth in A.R.S. §20-161. However, the Notice of
28 Hearing issued in this matter put Mr. Lindsey on notice that the

1 Director would exercise the discretion permitted by A.R.S.
2 §20-316 relating to Mr. Lindsey's material misrepresentations in
3 renewal applications submitted in 1990, 1992 and 1994.

4 15. Because the time tables set forth in A.R.S.
5 §20-161 do not have the applicability urged by Mr. Lindsey to
6 this proceeding, which was initiated under A.R.S. §20-316, Mr.
7 Lindsey's motion to dismiss was properly denied.

8 CONCLUSIONS OF LAW

9 1. Mr. Lindsey made material misrepresentations and
10 committed fraud in the six renewal applications which he
11 submitted between 1990 and 1994 for his non-resident surplus
12 lines broker license and his non-resident property and casualty
13 broker license in violation of A.R.S. §20-316(A)(3).

14 2. Mr. Lindsey has a record of suspension of an
15 insurance license in another jurisdiction in violation of A.R.S.
16 §20-316(A)(5).

17 ORDER

18 IT IS ORDERED:

19 1. Mr. Lindsey shall pay a civil penalty of
20 \$1,250.00 to the Director on or before December 30, 1994.

21 2. The Licenses issued to Mr. Lindsey shall be
22 suspended for 90 days, beginning December 30, 1994 through March
23 29, 1995.

24 3. Mr. Lindsey shall, on or before December 30,
25 1994, submit a letter with the Licensing Department, which
26 truthfully, fully, and adequately discloses the nature of every
27 regulatory action taken between January 1, 1990 and the present
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1 by any jurisdiction against any insurance license which he holds
2 in any jurisdiction.

3 4. Mr. Lindsey shall be permitted to renew license
4 number 0522715.

5 NOTIFICATION OF RIGHTS

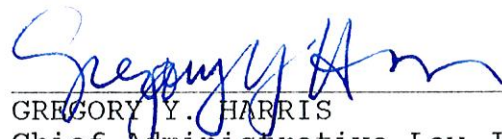
6 The aggrieved party may request a rehearing with
7 respect to this Order by filing a written petition with the
8 Administrative Law Division within 30 days of the date of this
9 Order, setting forth the basis for such relief pursuant to
10 A.A.C. R4-14-114(B).

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

14 EFFECTIVE this 30th day of November, 1994.

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CHRIS HERSTAM
Director of Insurance

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GREGORY Y. HARRIS
Chief Administrative Law Judge

1 COPY of the foregoing mailed/delivered
2 this 30th day of November, 1994, to:

3 Gay Ann Williams, Deputy Director
4 Charles R. Cohen, Executive Assistant Director
5 John Gagne, Acting Manager, Investigations
6 Maureen Catalioto, Supervisor, Licensing
7 Department of Insurance
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9 Phoenix, Arizona 85018

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Salt Lake City, UT 84121

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Salt Lake City, UT 84152

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Salt Lake City, UT 84121

18 United States Fidelity and Guaranty Co.
19 Salt Lake City Office
20 P.O. Box 21100
Salt Lake City, UT 84121

21 Homestead Insurance Company
200 Plaza Drive
Secaucus, NJ 07096

22 Western Surety Company
23 P.O. Box 5077
24 Sioux Falls, SD 57117-5077

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Transworld Building Trades & Contractors
Liability Association, Inc.
United America Legal Service Providers
Professional Liability Association
United Nations Sport and Recreation
Risk Retention Liability Corporation
Garage Services and Equipment Dealers
Liability Association of America
International Special Events and
Recreation Association, Inc.
North America Chemical Users and
Applicators Association, Inc.
Western Continent Realty Liability
Association, Inc.
Worldwide Outfitter and Guides Association, Inc.
American World Accounting Service Providers
Professional Liability Association
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