

MAY 19 1998

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

DEPT. OF INSURANCE
BY ED

1 In the Matter of:) Docket No. 98A-042-INS
 2)
 3 JACQUES CHARLES CLERMONT,) **ORDER**
 4)
 5 Respondent.)
 6)

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 8 On May 15, 1998, the Office of Administrative Hearings, through Administrative Law
 9 Judge Robert I. Worth submitted a Decision and Recommended Order ("Recommended Order"), a copy
 10 of which is attached and incorporated by this reference. The Director of the Arizona Department of
 11 Insurance has reviewed the Recommended Order and enters the following order:

- 12 1. The recommended findings of fact and conclusions of law are adopted.
- 13 2. The Respondent's life and disability insurance agent's license is revoked
- 14 3. The Respondent shall pay restitution in the sum of \$1,030.00 to Modern

15 Woodman.

16 NOTIFICATION OF RIGHTS

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 18 The aggrieved party may request a rehearing with respect to this Order by filing a written
 19 petition with the Office of Administrative Hearings within 30 days of the date of this Order, setting forth
 20 the basis for such relief pursuant to A.A.C. R20-6-114(B).

21 The final decision of the Director may be appealed to the Superior Court of Maricopa
 22 County for judicial review pursuant to A.R.S. § 20-166. A party filing an appeal must notify the Office of
 23

1 Administrative Hearings of the appeal within ten days after filing the complaint commencing the appeal,
2 pursuant to A.R.S. § 41-1092.10.

3 DATED this 19 day of May, 1998

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7 John A. Greene
Director of Insurance

8 A copy of the foregoing mailed
9 this 19th day of May, 1998

10 Charles R. Cohen, Deputy Director
11 Gregory Y. Harris, Executive Assistant Director
12 John Gagne, Assistant Director
13 Cathy O'Neil, Assistant Director
14 Donna Futrell, Investigator
15 Maureen Catalioto, Supervisor
16 Department of Insurance
17 2910 N. 44th Street, Suite 210
18 Phoenix, AZ 85018

19 Shelby L. Cuevas
20 Assistant Attorney General
21 1275 W. Washington
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23 Office of Administrative Hearings
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Phoenix, AZ 85007

Jacques Charles Clermont
4030 W. Grandview Road
Phoenix, AZ 85023

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2 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

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4 **In The Matter Of:**

Docket No. 98A-042-INS

5 **JACQUES CHARLES CLERMONT,**

6 **Respondent.**

DECISION AND RECOMMENDED ORDER

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9 On May 11, 1998, the above-entitled matter came on for hearing before
10 Administrative Law Judge, Robert I. Worth. The Arizona Department of Insurance
11 (herein called the "Department") was represented by Assistant Attorney General,
12 Shelby L. Cuevas, Esq., and the named Respondent failed to appear. Evidence and
13 testimony were presented, and based upon the entire case record, including all filed
14 pleadings, the following Findings of Fact, Conclusions of Law and Recommended Order
15 have been prepared and are hereby submitted by the Administrative Law Judge for
16 review, consideration, approval and adoption by the Director of the Department (herein
17 called the "Director").

18 **FINDINGS OF FACT**

19 1. At all times material herein, the Respondent, Jacques Charles Clermont, has
20 been and is currently the holder of a life and disability insurance agent's license number
21 25353 issued by the Department.

22 2. The Department's uncontroverted evidence revealed that Respondent, while
23 acting as a representative for an insurance company, Modern Woodman Company of
24 America (herein called "Modern Woodman"), collected the sum of \$500.00 in cash on
25 April 9, 1997 paid by Lillie T. Wilson, a woman who was then 87 years of age. Shortly
26 thereafter, on April 30, 1997, Respondent collected an additional cash payment of
27 another \$500.00 from Ms. Wilson, bringing the aggregate total of monies received by
28 Respondent from this individual to \$1,000.00.

29 3. The purported objectives of each of the above-described payments,
30 according to separate receipts given by Respondent for each payment, were to support

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1 and accompany the submission of an application for an annuity contract. These
2 payments, respectively, represented a one month premium on the annuity plan that
3 Respondent was attempting to sell Ms. Wilson.

4
5 4. Although both the application from Ms. Wilson and her payments given to Mr.
6 Clermont were to have been promptly submitted by Respondent to Modern Woodman
7 for approval and acceptance, neither any completed application form nor any portion of
8 the total monies received by Respondent for the purposes of obtaining the
9 contemplated annuity plan were forwarded to the insurance company which
10 Respondent represented. In point of fact, Ms. Wilson would have been ineligible for a
11 Modern Woodman annuity contract because of her age.

12 5. After being made aware of the communicated complaint from Ms. Wilson,
13 Modern Woodman made efforts to contact Respondent, culminating with a written
14 request and demand sent in July, 1997 for Respondent to account for all monies
15 received and to promptly transmit all collected funds. Modern Woodman had
16 terminated its representation contract with Respondent in June, 1997. Following the
17 lack of success in eliciting any form of a response from Mr. Clermont, Modern
18 Woodman transmitted a payment in August, 1997 to Ms. Wilson in the amount of
19 \$1,030.00, representing a full refund of all monies paid to their former agent plus
20 interest from the date that she had originally given the cash deposits to Respondent.

21 6. Respondent has not reimbursed Modern Woodman for any portion of the
22 monies refunded to Ms. Wilson. The overall course of conduct exhibited by Mr.
23 Clermont, including his improper obtaining and retaining of funds as well as his ongoing
24 unresponsiveness to all requests or demands, is found to reflect a blatant and wilful
25 disregard not only of the entitlements of his prospective clients and of the liability
26 exposure plus reputation damage to the insurance company he was representing but
27 also of his obligations as a licensed insurance agent in this State.

28 7. By his failure to attend and to participate in the scheduled hearing, Mr.
29 Clermont presented no evidence in defense or in mitigation of the charges of
30 wrongdoing in this case.

CONCLUSIONS OF LAW

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3 1. The undisputed evidence of record adequately established that Jacques
4 Charles Clermont, acting in his capacity as an insurance agent, collected cash
5 payments on two separate occasions from an elderly individual, ineligible for the annuity
6 plan as presented by Respondent, and thereafter failed to transmit any portion of such
7 payments or any application for an annuity contract to the insurance company he was
8 representing. The monies received by Mr. Clermont were never returned to the
9 individual from whom they were received.

10 2. The overall course of conduct exhibited by Respondent constituted the
11 misappropriation or conversion to his own use, or the illegal withholding of monies
12 belonging to others, and received in or during the conduct of business under or through
13 the use of his license in violation of A.R.S. §20-316(A)(4).

14 3. Respondent's conduct, as proven by credible evidence, also constitutes the
15 conducting of affairs under his license in a manner showing the licensee to be
16 incompetent or a source of injury and loss to a member of the public and an insurer, in
17 violation of A.R.S. §20-316(A)(7).

18 4. Mr. Clermont's conduct, as proven at the hearing, further constitutes the
19 diversion of the monies of an insurer or other person in connection with the transaction
20 of or the conduct of insurance business activities, within the meaning of and in violation
21 of the provisions of A.R.S. §20-463(A)(4)(a) and (b).

22 5. The evidence adduced at the hearing supports a determination that the
23 demonstrated conduct on the part of Jacques Charles Clermont constitutes a wilful
24 violation of, or noncompliance with provisions of Title 20, within the meaning of and in
25 violation of A.R.S. §20-316(A)(2).

26 6. The acts and/or omissions of Respondent provide grounds, pursuant to
27 A.R.S. §§20-316(A) and 20-316(C), for the Director to suspend, revoke or refuse to
28 renew Respondent's license and also to impose a civil penalty or to order that
29 Respondent provide restitution to any party injured by the licensee's actions.
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Original transmitted on 5/15/98

by: Chris Crawford Thomas, to:

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