

JAN 13 1992

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

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By

1 In the Matter of)	Docket No. 7521
)	
4 RANDOLPH NORTON FALKENBERG,)	ORDER
)	
5 Respondent.)	
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7 A hearing was held at the Arizona Department of
8 Insurance on November 15, 1991 in the above-captioned matter.
9 Respondent was present in person, and was represented by Paul J.
10 McGoldrick, Esq. The Arizona Department of Insurance was
11 represented by Assistant Attorney General W. Mark Sendrow, Esq.

12 Based upon the testimony and other evidence presented
13 at the hearing, the Director finds as follows:

14 FINDINGS OF FACT

15 1. Notice of this hearing was mailed to Respondent
16 at his address of last record.

17 2. Respondent is presently licensed as an insurance
18 adjuster by the State of Arizona (License No. 0794328).

19 3. On or about March 8, 1990, Respondent submitted
20 an application for an insurance adjuster's license. The
21 instructions to that application stated in pertinent part:

22 9. "Adjuster": Applicant must attach a
23 letter or resume which reflects experience/
training in the adjusting field.

24 4. Respondent submitted the following statement as
25 part of his application:

26 Job Description with James F. O'Toole &
27 Co., Inc. I started representing and
soliciting fire losses for James F. O'Toole
28 & Co. Inc. in June of 1987.

22

1 I have worked the field for the past
2 two (2) years signing up retainers for
3 commercial and residential fire losses and
4 burglary losses. I have also helped assist
5 with fire losses.

6 5. On or about March 4, 1990, Respondent was issued
7 an adjuster license. This license was subsequently renewed on
8 September 30, 1992.

9 6. At the hearing, James F. O'Toole, Sr. ("O'Toole
10 Sr.") testified that Respondent was retained by James F. O'Toole
11 & Co., Inc. ("O'Toole Inc.") as an independent contractor to
12 solicit fire losses. O'Toole Sr. testified that he did train
13 Respondent in the area of soliciting, but did not train him as
14 an adjuster. O'Toole Sr. testified that he filed a complaint
15 with the Department against Respondent because he became a
16 competitor.

17 7. James O'Toole, Jr. ("O'Toole Jr.") testified that
18 Respondent was retained by O'Toole Inc. as an independent
19 contractor to solicit fire losses. O'Toole Jr. testified that
20 Respondent was trained only as a solicitor, not as an adjuster.

21 8. Respondent was paid commissions and draws against
22 commissions.

23 9. Respondent answered the questions contained in
24 the application and no evidence was presented to show that
25 Respondent knowingly misled the Department as to his experience.

26 10. Respondent worked with O'Toole Inc. for
27 approximately two years, primarily soliciting fire losses. In
28 that capacity, Respondent became familiar with the duties and
responsibilities of an adjuster. Since March 1990, Respondent

1 has been licensed as an adjuster. Respondent presented the
2 testimony of Charles Cook. Mr. Cook sustained a fire loss, and
3 Respondent resolved the claim to Mr. Cook's satisfaction.

4 11. No evidence was presented to show that Respondent
5 has not been competent as an adjuster during the 1-1/2 years
6 that he has been licensed. No evidence was presented to show
7 that he has been the subject of complaint from any insured he
8 has represented.

9 CONCLUSIONS OF LAW

10 1. A.R.S. §20-312(C) states that to be licensed as
11 an adjuster, an applicant shall

12 3. [b]e a full-time salaried employee
13 of a licensed adjuster or a graduate of a
14 recognized law school, or have had
15 experience or special education or training
16 with reference to the handling of loss
17 claims under insurance contracts of
18 sufficient duration and extent reasonably to
19 make him competent to fulfill the
20 responsibilities of an adjuster.

21 2. Respondent was not a "full-time salaried
22 employee" of a licensed adjuster within the meaning of A.R.S.
23 §20-312(C)(3).

24 3. The definition of "employee" contained in A.R.S.
25 §23-901 is not instructive in interpreting "employee" as used in
26 §20-312(C)(3). It is well recognized that the term "employee"
27 as used in Title 23 is to be given liberal interpretation to
28 properly effectuate the purposes of the Workers' Compensation
Act.

4. The Department has not shown by clear and
convincing evidence that Respondent does not have sufficient

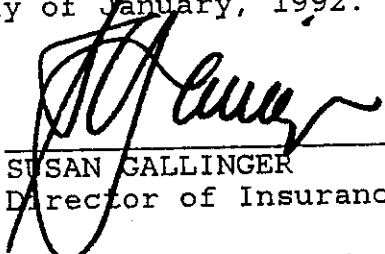
1 experience, education or training to make him competent as an
2 adjuster within the meaning of A.R.S. §20-312(C)(3).


3 5. Respondent's application for an insurance
4 adjuster license does not contain material misrepresentations
5 within the meaning of A.R.S. §§20-316(A)(3), 20-316(A)(1) and
6 20-290(B)(1).

7 6. Respondent did not wilfully fail to disclose that
8 he does not meet the qualifications to be licensed as an
9 adjuster within the meaning of A.R.S. §20-316(A)(2).

10 IT IS HEREBY ORDERED that Respondent's adjuster
11 license shall remain in full force and effect.

12
13 DATED this 13th day of January, 1992.

14 
15 _____
16 SUSAN CALLINGER
17 Director of Insurance

18 
19 _____
20 SARA M. BEGLEY
21 Chief Hearing Officer

22 COPY of the foregoing mailed/delivered
23 this 13th day of January, 1992, to:

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25 Assistant Attorney General
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