

1 bonds and he began contacting contractors in order to provide
2 bonding for them.

3 3. Respondent was referred to Equity International
4 Indemnity Company for purposes of offering surety bonds through
5 them. Equity International was a Colorado company, with offices
6 in Colorado Springs, Colorado. Equity International was not
7 licensed or otherwise authorized to conduct business in the
8 State of Arizona at the time Respondent made contact with it.

9 4. As a result of Respondent's efforts, Equity
10 International filed papers with the Arizona Corporation
11 Commission in order to conduct business as a foreign
12 corporation. Respondent became the statutory agent for Equity
13 International through that filing.

14 5. At about the same time, Respondent contacted the
15 Department of Insurance. He was directed to Bernard Hill and,
16 after Respondent questioned the necessity for licensure, Hill
17 provided a packet of information entitled "Qualification of
18 Unauthorized Insurers", which packet contained statutory
19 information, regulatory information and forms for both foreign
20 and alien insurers. Respondent took the packet of information
21 and, without reading the information contained in the packet,
22 sent the packet of information to Equity International's offices
23 in Colorado.

24 6. Also, at about the same time, Respondent
25 contacted the Surplus Lines Association in Phoenix and requested
26 information about Equity International's ability to conduct
27 business in the State of Arizona.

28

1 7. Based on his conversations with Bernard Hill and
2 his conversation with the Surplus Lines Association, Respondent
3 came to believe that the Arizona Department of Insurance did not
4 regulate those companies whose only business in this state is
5 surety bonds.

6 8. Respondent also received information from one of
7 Equity International's principals that it had received a legal
8 opinion to the effect that Equity International did not require
9 licensing or authorization from the Arizona Department of
10 Insurance in order to write surety bonds in this state.

11 9. Based on his conclusion, together with the
12 conclusion reported to him by one of Equity International's
13 principals, Respondent began offering contractor packages to
14 Equity International in order to provide surety coverage for
15 those contractors.

16 10. Between December 1989 and approximately February
17 1991, Respondent procured surety bonds for contractors in the
18 nature of labor and material bonds as well as performance and
19 payment bonds through Equity International Indemnity Company.
20 For each of the surety bonds procured by Respondent, Respondent
21 was compensated through commissions.

22 11. When Respondent procured some of the surety
23 bonds, he was listed as "Attorney in Fact" and he signed the
24 bonds in that capacity. Respondent did not realize what an
25 attorney in fact's role was for the bonds as he believed that
26 that role was nothing more than as witness or statutory agent.

27 12. For at least one bond, Equity International
28 Indemnity Company failed to provide surety coverage when the

1 contractor on whose behalf the bond was written failed to
2 perform. In connection with that bond, the City of Prescott
3 lost approximately \$500,000 in additional costs in connection
4 with the construction project due to Equity International's
5 failure to cover its loss.

6 13. In April 1992, the Director issued a Cease and
7 Desist Order against Equity International Indemnity Company for
8 its transaction of business without being qualified in the State
9 of Arizona.

10 14. During the course of the Department's
11 investigation leading up to the Cease and Desist Order,
12 Respondent's name appeared as the agent through whom these
13 surety bonds were issued.

14 15. As a result of Respondent's participation with
15 Equity International Indemnity Company, the Department issued a
16 complaint and notice of hearing, directed against Respondent.

17 16. A hearing was then set into the matter on
18 November 19, 1993 at which time Respondent appeared.

19 CONCLUSIONS OF LAW

20 1. This matter is within the jurisdiction of the
21 Director of the Arizona Department of Insurance pursuant to
22 A.R.S. §20-101 et seq. and the regulations promulgated
23 thereunder.

24 2. Respondent acted as agent for Equity
25 International Indemnity Company between December 1989 and
26 approximately February 1991 by soliciting, negotiating and
27 procuring the effectuation of surety bonds on behalf of Equity
28 International, as defined in A.R.S. §20-106.

1 3. The offer of providing surety bonds on behalf of
2 construction contractors constitutes "insurance" within the
3 meaning of A.R.S. §20-103 as such offer constitutes the
4 provision of a contract by which one undertakes to indemnify
5 another or to pay a specified amount upon determinable
6 contingencies.

7 4. The offer of surety bonds constitutes "surety
8 insurance" within the meaning of A.R.S. §20-257 as such sureties
9 contemplate the guarantee of performance of contracts.

10 5. Any surety bonds proposed to be sold in the State
11 of Arizona for the security or protection of any person or
12 municipality, the State or any department thereof or
13 organization requires that the insurer be authorized to transact
14 a surety business in this state in accordance with the
15 provisions of Title 20, A.R.S., as provided under A.R.S.
16 §20-1531.

17 6. The actions of Respondent and Equity
18 International Indemnity Company, whereby Respondent procured
19 surety bonds from Equity International on behalf of construction
20 contractors without Equity International being authorized to
21 transact business in the State of Arizona constitute violations
22 of A.R.S. §20-401.01 as Equity International Indemnity Company
23 did not have a certificate of authority to transact insurance
24 business in this State.

25 7. The actions of Respondent and Equity
26 International Indemnity Company, whereby Respondent procured
27 surety bonds from Equity International on behalf of construction
28 contractors without Equity International being authorized to

1 transact business in the State of Arizona and without having
2 authority to transact business as a surplus lines insurer,
3 constitute violations of A.R.S. §20-401.01.

4 8. Respondent's actions in representing Equity
5 International Indemnity Company as an agent for procuring surety
6 bonds on behalf of construction contractors, at a time when
7 Respondent knew that Equity International Indemnity Company did
8 not hold a Certificate of Authority to transact insurance
9 business and was not an authorized surplus lines insurer,
10 constitutes conduct which shows Respondent to be incompetent in
11 the conduct of affairs under his license in violation of A.R.S.
12 §20-316(A)(7).

13 9. Respondent's actions representing Equity
14 International Indemnity Company as an agent for the purpose of
15 procuring surety bonds, at a time when Respondent believed that
16 Equity International Indemnity Company was not subject to any
17 oversight regulation by the Department of Insurance constitutes
18 conduct of affairs showing him to be incompetent in the conduct
19 of affairs under his license in violation of A.R.S.
20 §20-317(A)(7).

21 10. Respondent's incompetence in failing to determine
22 the requirements for Equity International Indemnity Company to
23 transact surety business in this State, which failure resulted
24 in a financial loss to the City of Prescott due to Equity
25 International's failure to perform on a surety bond it wrote,
26 constitutes an act which is found to be a source of injury and
27 loss in violation of A.R.S. §20-316(A)(7).
28

1 11. There is insufficient evidence in the record of
2 this matter on which to conclude that Respondent acted in
3 willful violation or willful noncompliance of any provision of
4 Title 20, Arizona Revised Statutes.

5 12. Respondent's acts which constitute incompetence
6 in the conduct of affairs under his license constitutes grounds
7 upon which Respondent may be disciplined.

8 13. Respondent's acts which constitute incompetence
9 in the conduct of affairs under his license constitutes grounds
10 upon Respondent is subject to a civil penalty.

11 14. Respondent's acts which constitute incompetence
12 in the conduct of affairs under his license constitutes grounds
13 on which the Director may order Respondent to provide
14 restitution to any party injured by Respondent's actions.

15
16 
17 HAROLD J. MERKOW
Hearing Officer

18 NOW, THEREFORE, IT IS ORDERED that:

19 1. Respondent's life and disability insurance agent
20 and property and casualty broker licenses (number 658914) are
21 immediately revoked.

22 2. Respondent shall make full restitution to the
23 City of Prescott in an amount to be determined in future
24 proceedings by the hearing officer.

25 The aggrieved party may request a rehearing with
26 respect to this Order by filing a written petition with the
27 Hearing Division within 30 days of the date of this Order,
28

1 setting forth the basis for such relief pursuant to A.A.C.
2 R4-14-114(B).

3 - - DATED this 18th day of February, 1994.

4
5 
6 CHRIS HERSTAM
Director of Insurance

7 COPIES of the foregoing mailed/delivered
8 this 18th day of February, 1994, to:

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10 Charles R. Cohen, Executive Assistant Director
11 Jay Rubin, Assistant Director
12 Maureen Catalioto, Supervisor
13 Department of Insurance
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15 Phoenix, Arizona 85018

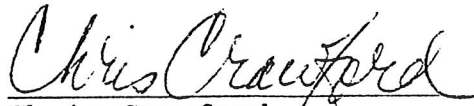
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