

FEB 6 1995

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

DEPARTMENT OF INSURANCE
By *all*

In the Matter of)	Docket No. 8653
)	
WALTER WAYNE NUTTER,)	
dba AMERICAN SENIOR HEALTH)	ORDER
CARE INSURANCE,)	
)	
Respondent.)	
_____)	

On December 22, 1994, the Director issued a Notice of Hearing in the above-captioned matter. The Notice of Hearing was mailed to Respondent at 10010 N. 50th Avenue, Glendale, Arizona 85302, his address of last record. A copy of the Notice of Hearing is attached and incorporated by this reference.

The Notice of Hearing required the Respondent to provide a written answer to the allegations set forth in the Notice within twenty days of the issuance of the Notice. As of this date, Respondent has not filed an Answer. On January 20, 1995, counsel for the Arizona Department of Insurance filed a Request for Default. As of this date, Respondent has not filed a response to the Department's Request.

Pursuant to A.A.C. R4-14-106(C), a party that fails to file an Answer within the time provided shall be deemed to be in default and one or more of the allegations in the Notice of Hearing may be deemed admitted.

IT IS ORDERED that:

1. The allegations in the Notice of Hearing, excluding paragraphs numbered 13 through 17 in Count III, are deemed admitted.
2. Count III in the Notice of Hearing is dismissed.

1
2 3. All insurance licenses issued to Respondent Walter
3 Wayne Nutter, dba American Senior Health Care Insurance are
4 revoked effective immediately.

5 4. Respondent Walter Wayne Nutter dba American Senior
6 Health Care Insurance shall pay restitution within 30 days of
7 this Order as follows: a) \$6,123.30 to J.C. Penney Life Insurance
8 Company; b) \$5,600.25 to Mutual Protective Insurance Company; and
9 c) \$5,183.00 to American Travellers Life Insurance Company.

10 5. Respondent Walter Wayne Nutter dba American Senior
11 Health Care Insurance shall provide proof of restitution payments
12 as directed by this Order to the Arizona Department of Insurance
13 within 60 days of this Order.

14 6. Respondent Walter Wayne Nutter dba American Senior
15 Health Care Insurance shall pay a civil penalty to the Arizona
16 Department of Insurance in the amount of \$1,250.00 within 30 days
17 of this Order.

18 DATED this 6th day of February, 1995.

19
20 Chris Herstam
21 CHRIS HERSTAM
22 Director of Insurance

23 Lewis D. Kowal
24 LEWIS D. KOWAL
25 Administrative Law Judge
26
27
28

1 COPY of the foregoing mailed/delivered
2 this 6th day of February, 1995, to:

3 Gay Ann Williams, Deputy Director
4 Charles R. Cohen, Executive Assistant Director
5 John Gagne, Acting Manager, Investigations
6 Claudia Acosta, Investigator
7 Maureen Catalioto, Supervisor, Licensing
8 Department of Insurance
9 2910 N. 44th Street, Suite 210
10 Phoenix, Arizona 85018

11 Kathryn Leonard
12 Assistant Attorney General
13 1275 W. Washington
14 Phoenix, Arizona 85007

15 Walter W. Nutter
16 10010 N. 50th Ave.
17 Glendale, Arizona 85302

18 Donald K. Lawler, Counsel
19 Mutual Protective Insurance Co.
20 P.O. Box 3477
21 Omaha, NE 68103

22 Leslie Richards
23 Senior Benefit Association
24 205 E. Osborn Rd.
25 Phoenix, AZ 85012

26 Ronald J. Holmer
27 Vice President, Operations
28 American Travellers Life
Insurance Company
3220 Tillman Dr.
Bensalem, PA 19020

29 Tony Padrucco
30 Senior Market Manager
31 J.C. Penney Life Insurance Co.
32 2700 W. Plano Parkway
33 Plano, TX 75075-8200

34 United American Insurance Company
35 P.O. Box 810
36 Dallas, TX 75221-0810

37 Charles and Emma Lewis
38 2402 W. 16th St., #C-2
39 Yuma, AZ 85364

40 Clarice T. Boyd
41 2187 10th Ave. South
42 Yuma, AZ 85364

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Earl and Evelyn Fralick
12789 Brenda Dr.
Yuma, AZ 85367

Theo Pauline Bowersox
2700 W. 8th St., #23
Yuma, AZ 85364

Zelma Moore
2456 4th Place
Yuma, AZ 85369

Chris Crawford
Chris Crawford

1 subpoenas issued by the Director to compel attendance of
2 witnesses and production of evidence in on the person's behalf.

3 Questions concerning issues raised in this Notice of
4 Hearing should be directed to Assistant Attorney General KATHRYN
5 LEONARD (602-542-3702), 1275 West Washington, Phoenix, Arizona
6 85007.

7
8 NOTICE OF APPLICABLE RULES

9 On January 23, 1992, the Arizona Department of
10 Insurance adopted A.A.C. R4-14-101 through R4-14-115, setting
11 forth the rules of practice and procedure applicable in
12 contested cases before the Director of Insurance. The hearing
13 will be conducted pursuant to these rules.

14 PURSUANT TO A.A.C. R4-14-106 RESPONDENT SHALL FILE A
15 WRITTEN ANSWER WITHIN TWENTY (20) DAYS AFTER ISSUANCE OF THIS
16 NOTICE OF HEARING AND SHALL MAIL OR DELIVER A COPY OF THE ANSWER
17 TO THE ASSISTANT ATTORNEY GENERAL DESIGNATED ABOVE. THE ANSWER
18 SHALL STATE RESPONDENT'S POSITION OR DEFENSE AND SHALL
19 SPECIFICALLY ADMIT OR DENY EACH ASSERTION IN THE NOTICE OF
20 HEARING. ANY ASSERTION NOT DENIED SHALL BE DEEMED TO BE
21 ADMITTED. ANY DEFENSE NOT RAISED IN THE ANSWER SHALL BE DEEMED
22 WAIVED. IF AN ANSWER IS NOT TIMELY FILED, THE RESPONDENT SHALL
23 BE DEEMED IN DEFAULT AND THE DIRECTOR MAY DEEM THE ALLEGATIONS
24 ARE TRUE, AND TAKE WHATEVER ACTION IS APPROPRIATE, INCLUDING
25 SUSPENSION, REVOCATION, DENIAL OF A LICENSE, OR RENEWAL OF A
26 LICENSE, IMPOSITION OF A CIVIL PENALTY AND/OR ORDER RESTITUTION
TO ANY PARTY INJURED.

1 PERSONS WITH DISABILITIES MAY REQUEST REASONABLE
2 ACCOMMODATIONS SUCH AS INTERPRETERS, ALTERNATIVE FORMATS, OR
3 ASSISTANCE WITH PHYSICAL ACCESSIBILITY. REQUESTS FOR
4 ACCOMMODATIONS MUST BE MADE WITH 72 HOURS PRIOR NOTICE. IF YOU
5 REQUIRE ACCOMMODATIONS, PLEASE CONTACT CHRIS CRAWFORD IN THE
6 ADMINISTRATIVE LAW DIVISION AT 912-8454.

7 This Hearing is being called by the Director because he
8 is informed and has cause to believe and therefore alleges the
9 following:

10 1. Walter Wayne Nutter, dba American Senior Health
11 Care Insurance ("Respondent") is currently licensed as a life
12 and disability insurance agent by the State of Arizona (License
13 No. 476564). That license expires January 31, 1995.

14 COUNT I

15 2. On or about December 6, 1993, Respondent received
16 check numbers 325 and 326 in the amounts of \$2,945.20 and
17 \$1,885.45, from Zelma Moore ("Moore") for a nursing home
18 insurance policy through J.C. Penney Life Insurance Company
19 ("J.C. Penney") and a medicare supplement insurance policy
20 through Mutual Protective Insurance Company ("Mutual
21 Protective").

22 3. On or about March 8, 1994, Respondent contacted
23 Moore to schedule an appointment for March 9, 1994, to deliver
24 the policies.

25 4. Respondent failed to appear for the scheduled
26 appointment.

1 renewal premium on an existing policy for Boyd and refunded the
2 balance of \$1,647.76.

3
4 COUNT III

5 13. On or about January 31, 1991, Respondent received
6 \$1,983.00 from Theo Pauline Bowersox ("Bowersox") for a
7 Long-Term Care, Nursing Home Care policy through American
8 Travellers for the period of January 21, 1991 to January 21,
9 1992.

10 14. On or about May 15, 1991, Respondent received an
11 additional \$1,983.00 from Bowersox for the Long-Term Care,
12 Nursing Home Care policy.

13 15. Respondent failed to forward the two \$1,983.00
14 payments. Instead, Respondent misappropriated and/or converted
15 the funds to his own use.

16 16. In January, 1992, Respondent forwarded Moore's
17 application and \$1,983.00 premium to American Travellers for the
18 Long Term Care, Nursing Home Care policy.

19 17. On or about January 21, 1992, American Travellers
20 issued Moore a Long Term Care-Nursing Home Care policy for the
21 period of January 21, 1992 through January 21, 1993.

22 COUNT VI

23 18. On or about January 18, 1991, Respondent received
24 a \$2,970.00 check from Charles and Emma Lewis ("the Lewis") for
25 nursing home policies through American Travellers for the period
26 of January 21, 1991 to January 21, 1992.

19. On or about October 24, 1991, Respondent received

1 a \$2,970.00 check from the Lewis' for the renewal of their
2 nursing home policies through American Travellers.

3 20. Respondent failed to forward the Lewis' premium to
4 American Travellers. Instead, Respondent misappropriated and/or
5 converted the funds to his own use.

6 21. On or about January 21, 1992, the Lewis' policies
7 lapsed for non-payment of premium.

8 22. On or about March 27, 1992, American Travellers
9 reinstated the Lewis' policies after receipt of six months
10 premium in the amount of \$1,544.40. American Travellers applied
11 the Lewis' \$2,970.00 premium paid to Respondent on October 24,
12 1991 to their policies as a full year premium paid with no lapse
13 in coverage.

14 COUNT V

15 23. On or about February 18, 1993, Respondent received
16 \$3,178.10 from Earl and Naoma Fralick ("the Fralicks") for two
17 long term care policies through J.C. Penney.

18 24. Shortly thereafter, Respondent contacted the
19 Fralicks and advised them that J.C. Penney had declined coverage.

20 25. On or about May 5, 1994, the Fralicks contacted
21 J.C. Penney and requested a refund of their premium and were
22 notified that they had never received an application and/or
23 premium from Respondent on behalf of the Fralicks.

24 26. Respondent failed to forward the Fralicks premium
25 to J.C. Penney. Instead, Respondent misappropriated and/or
26 converted the funds to his own use.

1 that Respondent's license may be suspended or revoked under
2 A.R.S. § 20-316(A)(1), together with 20-290(B)(2).

3 36. Respondent's conduct described above constitutes a
4 wilful violation of, or wilful noncompliance with, any provision
5 of this title, or any lawful rule, regulation or order of the
6 director in violation of A.R.S. § 20-316(A)(2).

7 37. Respondent's conduct described above constitutes
8 misappropriation or conversion to their own use or illegal
9 withholding of monies belonging to policyholders, insurers,
10 beneficiaries or others and received in or during the conduct of
11 business under the license or through its use in violation of
12 A.R.S. § 20-316(A)(4).

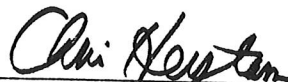
13 38. Respondent's conduct described above constitutes a
14 conduct of affairs under his license showing him to be
15 incompetent or a source of injury and loss to the public or any
16 insurer, in violation of A.R.S. § 20-316(A)(7).

17 WHEREFORE, if after hearing, the Director makes a
18 finding of one or more of the above-described violations, he may
19 suspend, revoke or refuse to renew the Respondent's insurance
20 license, impose a civil penalty and may order restitution,
21 pursuant to A.R.S. §§ 20-316(A) and 20-316(C).

22 Pursuant to A.R.S. § 20-150, the Director delegates all
23 authority, powers, duties and functions, whether ministerial or
24 discretionary vested in Director of Insurance of the State of
25 Arizona, whether implied or expressed, to GREGORY Y. HARRIS to
26 act as the Administrative Law Judge in this matter. This

1 delegation of authority shall continue until specifically
2 revoked.

3 DATED in Phoenix, Arizona this 22nd day of
4 December, 1994.

5
6 

7 CHRIS HERSTAM, Director
8 Arizona Department of Insurance

9 COPY of the foregoing mailed this
10 22nd day of December, 1994, to:

11 Kathryn Leonard
12 Assistant Attorney General
13 1275 West Washington, Room 259
14 Phoenix, Arizona 85007

15 Gay Ann Williams, Deputy Director
16 Charles R. Cohen, Executive Assistant Director
17 John Gagne, Acting Manger of Investigations
18 Claudia Acosta, Investigator
19 Maureen Catalioto, Supervisor
20 Department of Insurance
21 2910 North 44th Street, Suite 210
22 Phoenix, Arizona 85018

23 Walter Wayne Nutter
24 10010 N. 50th Avenue
25 Glendale, AZ 85302

26 United American Insurance Company
P.O. Box 810
Dallas, TX 75221-0810

Mr. Tony Padrucco
Senior Market Manager
J.C. Penney Life Insurance Company
2700 W. Plano Parkway
Plano, TX 75075-8200

Donald K. Lawler, Counsel
Mutual Protective Insurance Company
P.O. Box 3477
Omaha, NE 68103

1 Ronald J. Holmer
Vice President, Operations
2 American Travellers Life Insurance Company
3220 Tillman Drive
3 Bensalem, PA 19020

4 Ms. Zelma Moore
2456-4th Place
5 Yuma, AZ 85369

6 Ms. Leslie Richards
Senior Benefit Association
7 205 E. Osborn Rd.
Phoenix, AZ 85012

8 Clarice T. Boyd
9 Heatherwood, Rt. 1, Box 315A
Aitkin, MN 56431

10 Charles & Emma Lewis
11 2402 W. 16th St. #C-2
Yuma, AZ 85364

12 Theo Pauline Bowersox
13 2700 W. 8th Street, #23
Yuma, AZ 85364

14 Earl & Evelyn Fralick
15 12789 Brenda Drive
Yuma, AZ 85367

16
17
18
19
20
21

22
23
24
25
26

Chris Crawford
4171c:CPA94-242