

MAR 27 1996

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

DEPT. OF INSURANCE

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

In the Matter of)	Docket No. 96A-003-INS
)	
WILLIAM RICHARD MUHICH,)	
)	ORDER
)	
Petitioner.)	
)	
_____)	

On March 26, 1996, the Office of Administrative Hearings, through Administrative Law Judge Lewis D. Kowal submitted "Recommended Findings of Fact, Conclusions of Law and Recommended Order", a copy of which is attached and incorporated by this reference. The Director of the Arizona Department of Insurance has reviewed the recommendation, and enters the following order:

1. The recommended findings of fact and conclusions of law are adopted.
2. An individual life and disability agent license will be issued to William Richard Muhich.

NOTIFICATION OF RIGHTS

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

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

4 EFFECTIVE this 27th day of March, 1996

5
6 Chris Herstam
7 Chris Herstam
8 Director of Insurance

8 A copy of the foregoing
9 mailed this 27th day of
10 March, 1996

11 Charles R. Cohen, Deputy Director
12 Gregory Y. Harris, Executive Assistant Director
13 John Gagne, Assistant Director
14 Maureen Catalioto, Supervisor
15 Department of Insurance
16 2910 N. 44th St., Suite 210
17 Phoenix, AZ 85018

18 Michael De La Cruz
19 Assistant Attorney General
20 1275 West Washington
21 Phoenix, AZ 85012

22 Frederick C. Berry, Jr.
23 4041 N. Central Ave., Ste. 800
24 Phoenix, AZ 85012

25 William Richard Muhich
26 2301 E. University Dr., Apt. #140
27 Mesa, AZ 85212

28 Curvey Walters Burton

IN THE OFFICE OF ADMINISTRATIVE HEARINGS MAR 26 1996

Office of Administrative Hearings
DEPARTMENT OF INSURANCE
By Lewis D. Kowal

In the Matter of

No. 96A-003-INS

WILLIAM RICHARD MUHICH,

**RECOMMENDED FINDINGS OF
FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER**

Petitioner.

On March 14, 1996, a hearing took place in the above-referenced matter. Assistant Attorney General Michael De La Cruz appeared on behalf of the Arizona Department of Insurance ("Department"). Frederick C. Berry, Jr. represented Petitioner William Richard Muhich ("Mr. Muhich").

Based upon the entire record, including all pleadings, motions, testimony, and exhibits, Administrative Law Judge Lewis D. Kowal prepared the following Recommended Findings of Fact, Conclusions of Law, and Recommended Order for consideration by the Director of the Department ("Director").

FINDINGS OF FACT

1. On November 6, 1995, Mr. Muhich filed an application for a life and disability insurance agent license (the "1995 Application") with the Department. The Department issued Mr. Muhich a conditional license in connection with the 1995 Application upon his execution of an Agreement for Conditional License.

2. In the 1995 Application, Mr. Muhich disclosed that on May 14, 1985 he entered into a Consent Order with the Department In the Matter of William Richard Muhich (the "Consent Order"), Docket No. 5448. The Consent Order provided for the revocation of all insurance licenses held by Mr. Muhich on the grounds that Mr. Muhich had misappropriated or converted to his own use monies belonging to Winifred Benjamin received in or during the conduct of business under his insurance license or through its use in violation of A.R.S. §20-316(A)(4). The Consent Order also contained a provision which declared Mr. Muhich to be incompetent or a source of injury and loss to the public or any insurer, in violation of A.R.S. §20-316(A)(7).

3. On November 7, 1992, Mr. Muhich reapplied for a life and disability insurance agent's license (the "1992 Application") which was denied by the Department. Pursuant to Mr. Muhich's request, a hearing was held In the Matter of

1 William Richard Muhich, Docket No. 7982. Subsequently, an Order was issued
2 denying the 1992 Application on the basis that in 1981 that Mr. Muhich had
3 misappropriated or converted to his own use \$11,995.95 belonging to Winifred
4 Benjamin, in violation of A.R.S. §20-316(A)(4). Further, the Order found by such
5 conduct that Mr. Muhich was incompetent or a source of injury and loss to, or
6 repeated complaint by, the public or any insurer, in violation of A.R.S. §20-316(A)(7).
7 These findings were based upon Mr. Muhich's conduct as admitted in the Consent
8 Order.

9 4. Based upon the Consent Order and the Order in Docket No. 7982, the
10 Department claims that Mr. Muhich's conduct and actions reflect: a) a record of
11 dishonesty in business or financial matters within the meaning of A.R.S. §20-
12 290(B)(2); b) a record of misappropriation or conversion or illegal withholding of
13 monies within the meaning of A.R.S. §20-290(B)(3); c) a record of conduct showing
14 incompetency or a source of injury and loss to or repeated complaint by the public or
15 any insurer within the meaning of A.R.S. §20-290(B)(4); and d) a record of revocation
16 of his insurance license within the meaning of A.R.S. §20-290(B)(5).

17 5. At the hearing, Mr. Muhich admitted that he had misappropriated or
18 converted funds belonging to Winifred Benjamin and that his license was revoked as
19 a result of such action pursuant to the Consent Order. However, Mr. Muhich credibly
20 testified that at the time of such occurrence he was consuming alcohol at the rate of
21 one bottle of whiskey per day but is now a recovered alcoholic. Further, Mr. Muhich
22 credibly testified that the 1981 misappropriation occurred as a result of his alcohol
23 problem. The evidence presented showed that the 1981 misappropriation incident
24 was an isolated occurrence and that Mr. Muhich did not have and has not had any
25 other disciplinary or unresolved complaints before or after that incident, other than
26 Docket No. 5448.

27 6. Mr. Muhich credibly testified that since 1981 he regularly attends
28 weekly meetings of Alcoholics Anonymous. Since 1981, Mr. Muhich has been
29 actively involved in Arizona Pathways, a non-denominational church which offers
30 spiritual philosophy and counseling to people with substance addictions.

31 7. Mr. Muhich presented Richard Plasket III, Leonard Mink, Ellen Gardner
32 and Russel S. Olds as character witnesses. The testimony of those witnesses as to
33 Mr. Muhich's good character and integrity was credible.
34

1 8. Richard Plasket is a tax accountant who, since May 1984, has been
2 and is a business and social acquaintance of Mr. Muhich. Mr. Plasket credibly
3 testified as to Mr. Muhich's honesty socially and in business dealings. Since Mr.
4 Muhich's license revocation, Mr. Plasket has referred some of his clients to Mr.
5 Muhich for business transactions. Mr. Plasket testified that approximately 10 years
6 ago Mr. Muhich had confided to him that Mr. Muhich had an alcohol problem.

7 9. Leonard Mink, who has been in the insurance business for 38 years,
8 has known Mr. Muhich since the summer of 1983. Mr. Mink testified that previously
9 he had employed Mr. Muhich to sell Medicare supplement plans and found Mr.
10 Muhich to have properly handled and accounted for the funds collected regarding
11 those transactions. In 1985, Mr. Muhich informed Mr. Mink about the problems Mr.
12 Muhich was having with his insurance license and his alcohol problem. If approved
13 for licensure, Mr. Mink stated that he would rehire Mr. Muhich.

14 10. Ellen Gardner, an ordained minister and founder of Arizona Pathways,
15 has known Mr. Muhich since 1991. Ms. Gardner stated that based upon her
16 background and experience with substance abusers and addicts as well as her
17 relationship with Mr. Muhich, she does not believe Mr. Muhich is likely to have a
18 relapse and begin drinking again.

19 11. Russel S. Olds, an attorney, has known Mr. Muhich for approximately
20 six months. They met at an Alcoholics Anonymous meeting. Mr. Olds testified that
21 Mr. Muhich regularly attends Alcoholics Anonymous meetings on a weekly basis. Mr.
22 Olds' legal practice consists mainly of estate planning. Mr. Muhich informed Mr. Olds
23 as to Mr. Muhich's alcohol problem and the 1981 misappropriation incident.
24 Recently, Mr. Olds hired Mr. Muhich to be a paralegal at Mr. Olds' office.

25 12. Messrs. Plasket, Mink and Olds are friends of Mr. Muhich and either
26 have previously financially benefited from a business relationship in the past or may
27 financially benefit from such a relationship in the future should Mr. Muhich's 1995
28 Application be granted. Ms. Gardner shares a similar spiritual philosophy with Mr.
29 Muhich and considers him to be her friend. Taking into consideration the personal
30 and financial bias of the above-mentioned witnesses, it is determined that their
31 testimony at the hearing was credible, particularly as to their belief that Mr. Muhich
32 was deserving to hold an insurance license.

33 13. Further, Mr. Muhich testified that Winifred Benjamin was paid in full by
34 the insurance company, Intercontinental Life, which, in turn, he believes was

1 reimbursed through his renewal commissions. Intercontinental Life had informed Mr.
2 Muhich that it would apply his renewal commissions to the \$11,995.95 it had paid to
3 Winifred Benjamin. Mr. Muhich believes that at that time, any future renewal
4 commissions which became due and owing to him from Intercontinental Life would
5 equal or exceed \$11,995.95.

6 14. Since 1994, Mr. Muhich has held a Power of Attorney for an individual
7 and has acted as that person's trustee. Mr. Muhich sought Mr. Olds' advice
8 regarding the transactions Mr. Muhich has handled for that individual as a fiduciary.
9 The evidence presented indicated that Mr. Muhich has acted responsibly in
10 execution of his fiduciary duties as a trustee.

11 15. Since the revocation of his insurance license, Mr. Muhich has been
12 employed in a variety of positions and has not had an alcoholic beverage since May
13 1981. Mr. Muhich's testimony at the hearing was determined to be credible.

14 CONCLUSIONS OF LAW

15 1. Mr. Muhich received notice of this proceeding as prescribed by A.R.S.
16 §§20-163 and 41-1061.

17 2. The Director has jurisdiction over this matter pursuant to A.R.S.
18 §§20-161 and 20-290.

19 3. The Director is empowered by statute with the discretion to issue or to
20 deny licenses to applicants, even to those who have had a prior license revoked by
21 the Department.

22 4. The evidence presented at the hearing established that Mr. Muhich had
23 a prior insurance license revoked by the Department in 1985 based upon
24 misappropriation of funds, which is a serious violation of the insurance laws.
25 However, Mr. Muhich has met his burden of proof in this case by showing: a) he is a
26 recovered alcoholic; b) he attends Alcoholics Anonymous meetings on a regular
27 basis; c) his good character over the past 15 years; d) he has not had any alcoholic
28 beverages over the past 15 years and does not plan to have any in the future; and e)
29 the 1981 misappropriation of funds was a one time isolated incident which occurred
30 approximately 15 years ago. Those factors warrant favorable exercise of the
31 Director's discretion in granting the instant application.

32 ...

33 ...

34 ...

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
29
30
31
32
33
34

RECOMMENDED ORDER

Based upon the above, the undersigned Administrative Law Judge recommends that an individual life and disability agent license be issued to William Richard Muhich.

DATED this 26th day of March, 1996.

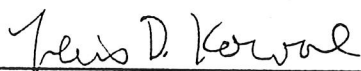
OFFICE OF ADMINISTRATIVE HEARINGS



LEWIS D. KOWAL
Administrative Law Judge

COPY of the foregoing mailed/delivered this 26th day of March, 1996, to:

Chris Herstam, Director
Arizona Department of Insurance
2910 North 44th Street, Suite 210
Phoenix, AZ 85018



Lewis D. Kowal