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STATE OF ARIZONA
FILED

MAR 31 1994

DEPARTMENT OF INSURANCE
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STATE OF ARIZONA
DEPARTMENT OF INSURANCE

In the Matter of:)
Linda M. Brooks,)
Respondent.)
-----)

Docket No. 8342

Findings of Fact
Conclusions of Law
Recommendation
Order

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ARIZONA DEPT. OF INS.
LICENSING SECTION

This matter came on for hearing on March 1, 1994 pursuant to a Notice of Hearing containing four (4) Counts issued by the Director on January 26, 1994. The matter was heard by Michael M. Sophy, Hearing Officer authorized by the Director. The Department was represented by Assistant Attorney General Gregory Y. Harris, Esq. Respondent did not appear, nor was she represented by counsel.

Testimony under oath was received from five (5) witnesses:

1. Ronald Ward, Investigator for the Department of Insurance.
2. Darla Barrett, of Security General Life Insurance Company, Oklahoma City, Oklahoma, testified telephonically.
3. Clyde Sturgeon, of Viking Insurance, Irvine, California, testified telephonically.
4. Eric Litcher, of Condor Insurance Company, El Segundo, California, testified telephonically.
5. Frederick C. Berry, Esq., representing Condor Insurance Company.

Nineteen (19) exhibits were offered and received into evidence without objection:

1. Exhibit No. 1: Examination Under Oath transcript and Order to Appear and Subpoena Duces Tecum dated December 10, 1993 issued to Linda M. Brooks.

2. Exhibit No. 2: Affidavit of Service of Ron Ward, dated December 30, 1993.
3. Exhibit No. 3: Copies of certified envelopes sent to Linda Brooks regarding service of Notice of Hearing.
4. Exhibit No. 4: Subpoena Duces Tecum to Mailboxes, Etc. dated December 30, 1993.
5. Exhibit No. 5: Response of Mailboxes, Etc. to Subpoena Duces Tecum marked January 4, 1994 by Investigations Division, from Gayle Anderson.
6. Exhibit No. 6: Certified copy of letter from Security General Life Insurance Company dated December 6, 1989.
7. Exhibit No. 7: Certified copy of letter from Viking Insurance dated November 7, 1993.
8. Exhibit No. 8: Copy of Linda Brooks' application for Property and Casualty license dated August 31, 1992 with a copy of the 1993 license.
9. Exhibit No. 9: Copy of Linda Brooks' application for Life and Disability license dated August 30, 1993 with a copy of the 1993 license.
10. Exhibit No. 10: Copy of Linda Brooks' application for Broker (Property and Casualty) license dated August 31, 1992.
11. Exhibit No. 11: Copy of L.W. Gaskill & Company's license application listing Linda Brooks as agent, dated June 28, 1993.
12. Exhibit No. 12: License Certification of Linda M. Brooks, issued by Maureen Catalioto.
13. Exhibit No. 13: License Certification of Economart Insurance Services, Inc., issued by Maureen Catalioto.
14. Exhibit No. 14: License Certification of L.W. Gaskill & Company, Inc., issued by Maureen Catalioto.
15. Exhibit No. 15: Certified copy of Order Summarily Suspending License of L.W. Gaskill & Company, Inc., dated December 10, 1993.
16. Exhibit No. 16: Agreement between Condor Insurance Company and L.W. Gaskill & Company, Inc., dated May, 1993.
17. Exhibit No. 17: Agency Agreement between Condor Insurance Company and L.W. Gaskill & Company, Inc., effective July 1, 1993.
18. Exhibit No. 18: Agency Agreement Addenda between Condor Insurance Company and L.W. Gaskill & Company, Inc., effective July 1, 1993.

19. Exhibit No. 19: Copy of Economart Insurance Services, Inc., license application listing Linda Brooks as agent.

At the conclusion of the hearing the matter was taken under advisement.

FINDINGS OF FACT

Following review of the pleadings, the testimony, the documentary evidence admitted and the applicable law, the Hearing Officer finds, as a matter of law:

1. That respondent Linda M. Brooks holds insurance license number 665921 with the following authorizations and expiration dates:

- a. Property and Casualty Agent, expires August 31, 1994.
- b. Life and Disability Agent, expires August 31, 1995.
- c. Property and Casualty Broker, expires August 31, 1995.

See Exhibit No. 12.

2. That respondent, Linda M. Brooks, in applications for licenses from the Department of Insurance, listed the following business and other addresses on the following dates:

- a. 7150 E. Camelback Rd., #300, Scottsdale, Arizona, 85251, dated August 30, 1993, a business address. Exhibits Nos. 9, 8, 12.
- b. 9415 No. 99th Ave., Peoria, Arizona, 85345, dated August 30 1993, a home address. Exhibits Nos. 9, 12.
- c. 4400 North Scottsdale Rd., Suite 9-233, Scottsdale, Arizona, 85251, dated August 30, 1993, an optional mailing address. Exhibit No. 9.
- d. 5122 North 31st Way, #224, Phoenix, Arizona, 85016, dated August 31, 1992, a home address. Exhibits Nos. 10, 8.
- e. 3104 E. Camelback Rd., #163, Phoenix, Arizona, 85016, dated August 31, 1992, a mailing address. Exhibits Nos. 10, 8, 13.

3. That no other addresses or address changes were provided by respondent to the Department of Insurance. See Exhibits Nos. 12, 2, 3, 4, 5, and 1, and the testimony of witness Ron Ward.

4. That respondent Linda M. Brooks was served with a Notice of Hearing and Complaint in this matter as well as an Order to Appear and Subpoena Duces Tecum by Certified Mail addressed to respondent at all the addresses

provided by respondent to the the Department of Insurance. See Exhibits Nos. 2, 3, 4, 5 and the testimony of witness Ron Ward.

5. That Arizona Revised Statutes §20-313 provides:

"Every licensee shall promptly give written notice to the director of any change in his address."

6. That respondent Linda M. Brooks was served with an Order to Appear and Subpoena Duces Tecum dated December 10, 1993 for an appearance on December 20, 1993 at the Arizona Department of Insurance; and, that respondent Linda M. Brooks failed to appear or give reason for her failure to appear. See Exhibits Nos. 1, 2 and the testimony of witness Ron Ward.

7. That Arizona Revised Statutes, §20-316 (A)(2) provides, in pertinent part:

"A. The director may . . . revoke any license issued under this article . . . if, upon notice . . . and upon a hearing. . . the director finds as to the licensee any one or more of the following:

* * *

"2. Wilful violation of, or wilful noncompliance with any provision of this title, or any lawful rule, regulation or order of the director."

8. That respondent, Linda M. Brooks indicated in the application for an Agency license of Economart Insurance Services, Inc., signed by respondent, dated as received by the Department on November 12, 1991 and listing respondent as the licensed individual in the agency as well as Vice President, Secretary, Treasurer and Director, that Economart was authorized to represent Viking Insurance Company (See Exhibit No. 19); but, that agency authorization for Economart from Viking Insurance was terminated in 1990 (See Exhibit No. 7); and, that Viking at no time appointed or authorized respondent to represent the company (See Exhibit No. 7 and testimony of witness, Clyde Sturgeon).

9. That respondent, Linda M. Brooks, indicated on her application to renew her insurance license dated August 31, 1992 that she was authorized to represent Viking Insurance Co., (See Exhibit No. 8) when she had never been authorized to represent Viking and was not so authorized on August 31, 1992 (See Exhibit No. 7 and testimony of witness Clyde Sturgeon.)

10. That respondent, Linda M. Brooks, indicated on her application to renew an insurance license dated August 30, 1993 that she was authorized to represent Security General Insurance Company (See Exhibit No. 9) when her

authority to represent Security General was cancelled effective January 6, 1990 (See Exhibit No. 6 and testimony of witness Darla Barrett.).

11. That Arizona Revised Statutes §20-290 (B)(1) provides:

"B. The director may refuse to accept any application or issue any license if he finds one or more of the following:

"1. Material misrepresentations or fraud in the application for, or attempt to obtain, any insurance license."

12. That Arizona Revised Statutes § 20-316 (A)(3) provides, in pertinent part:

"A. The director may. . . revoke . . . any license . . . if . . . the director finds :

* * *

"3. The existence of misrepresentation or fraud in obtaining or attempting to obtain any insurance license."

13. That respondent, Linda M. Brooks, was the Vice President and Secretary of L.W. Gaskill & Co, Inc., as well as the licensed individual listed on the Gaskill application dated issued July 6, 1993 (See Exhibit No. 11) as well as a Director and incorporator of Gaskill (See Exhibit No. 14).

14. That L.W. Gaskill & Co., Inc., entered into agreements with Condor Insurance Company in May and July of 1993 (See Exhibits Nos. 16,17, 18); that the July agreements were signed by respondent Linda M. Brooks as Vice President and Corporate Secretary (See Exhibits Nos. 17,18) ; and, that the agreements detailed the obligations of the parties including the transmissions of premiums to Condor or its agent.

15. That substantial monies due Condor Insurance Co., under the terms of its agreements with Gaskill, were not transmitted to Condor which led to a consented entry of a Preliminary and Permanent Injunction and Partial Judgment of Liability in the Superior Court, Maricopa County, Cause No. CV93-25238, denominated Condor Insurance Company, Inc. v. L.W. Gaskill & Co., Inc. et. al.. See Exhibit No. 15 and testimony of witnesses Ron Ward and Frederick C. Berry.

16. That the Order of the Superior Court in the action identified in Finding Number 15 above specifically ordered, adjudged and decreed that L.W. Gaskill & Co., Inc. was liable to Condor for the following:

- a. Conversion of policy premiums held in trust by Gaskill and belonging to Condor.
- b. Breaching the fiduciary duty owed by Gaskill to Condor with respect to

handling policy premiums held in trust for Condor.

c. Facilitating a constructive trust of policy premiums belonging to Condor and obtained by others through fraud, misrepresentation, conversion or other means. See Exhibit No. 15.

17. That the acts which provided the basis for the order of the Superior Court occurred while respondent was the responsible licensee of Gaskill, as well as Vice President and Secretary of the corporation. See Exhibits Nos. 11,14,1 and 15.

18. That Arizona Revised Statutes §20-316 (A)(7) provides, in pertinent part:

"A. The director may . . . revoke . . . any license issued under this article . . . if . . . the director finds . . .

* * *

"7. Conduct of affairs under the license showing the licensee to be incompetent or a source of injury and loss to, or repeated complaint by, the public or any insurer."

Conclusions of Law

Based on the foregoing factual findings and a review of applicable law, the hearing officer now concludes, as a matter of law:

1. That the Director of the Insurance Department of the State of Arizona is authorized by Title 20, Arizona Revised Statutes to enforce Arizona law relating to insurance.

2. That service upon the respondent, Linda M. Brooks, was complete and notice was effective when the Notice of Hearing was deposited in the U.S. Mail with adequate postage addressed to the last address provided to the Department by the respondent.

3. That respondent's failure to notify the director of her changes of address violated the requirements of Arizona Revised Statutes §20-313.

4. That respondent's failure to appear and give testimony at the Department pursuant to subpoena served upon her violated the provisions of Arizona Revised Statutes §20-316(A)(2).

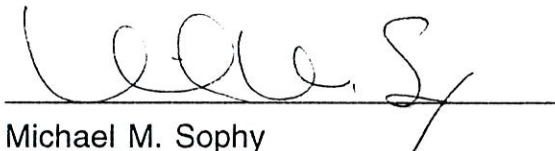
5. That respondent's misrepresentations, on license applications, of the companies she was authorized to represent, violated the provisions of Arizona Revised Statutes §20-316 (A)(3) and §20-290 (B)(1).

6. That respondent's failure to exercise appropriate control and authority over the business of L. W. Gaskill & Co, Inc., to prevent the conversion, breach of fiduciary duty and creation of a constructive trust in favor of Condor Insurance Co. demonstrated such incompetence or source of injury and loss as to violate Arizona Revised Statutes §20-316 (A)(7)/

Recommendation

Based on the entire record in this matter, the findings and conclusions and a review of applicable law, the undersigned Hearing Officer, duly appointed, specifically recommends that the Director order the revocation of the insurance licenses issued to the respondent, Linda M. Brooks and impose a civil penalty upon respondent Linda M. Brooks in the amount of One Thousand Dollars (\$1,000.00) for multiple violations of the Insurance Code.

DATED this 21st day of March, 1994.



Michael M. Sophy
Hearing Officer

ORDER

Based on the record above, I hereby order the following:

1. Revocation of insurance license number 665921 held by Linda Margaret Brooks, SSN 515-50-4619, Date of Birth, August 17, 1947:
 - a. Property and Casualty Agents and Brokers license due to expire August 31, 1994.
 - b. Life and Disability Agents license due to expire August 31, 1995.

2. Imposition of a civil penalty upon Linda Margaret Brooks for multiple violations of the insurance code in the amount of One Thousand Dollars (\$1,000.00).

ORDERED this 31st day of March, 1994/



Chris Herstam
Director of Insurance

Copy of the foregoing mailed
this 31st day of March, 1994:

Gregory Y. Harris, Esq.
Office of the Attorney General
1275 W. Washington
Phoenix, Arizona 85007

Gay Ann Williams, Deputy Director
Jay Rubin, Assistant Director
Ron Ward, Investigator
Maureen Catalioto, Supervisor
Department of Insurance
2910 North 44th Street, Suite 210
Phoenix, Arizona 85018

Linda M. Brooks
c/o L.W. Gaskill and Company, Inc.
7150 E. Camelback Road, Suite 300
Scottsdale, Arizona 85251

Linda M. Brooks
9415 North 99th Avenue, #2037
Peoria, Arizona 85345

Linda M. Brooks
4400 North Scottsdale Road
Suite 9-233
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Linda M. Brooks
c/o Economart Insurance Services
3104 East Camelback, #315
Phoenix, Arizona 85016

Michael Hensley
Jones, Skelton & Hochuli
2901 North Central, Suite 800
Phoenix, Arizona 85012

A handwritten signature in cursive script that reads "Chris Crawford". The signature is written in black ink and is positioned above a horizontal line that extends across the width of the signature.