

JAN 11 1995

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

DEPARTMENT OF INSURANCE  
By                     

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In the Matter of	)	Docket No. 8519
	)	
MIDWEST INSURANCE COUNSELORS,	)	
INC. dba AVONDALE/GOODYEAR	)	ORDER
MANN INSURANCE AGENCY, AND	)	
MARVIN A. VENS,	)	
	)	
Respondents.	)	

A hearing on the above-captioned matter took place on the following dates: December 1, 1994, December 9, 1994 and December 14, 1994. Assistant Attorney General Kathryn Leonard represented the Arizona Department of Insurance ("the Department"). Respondent Marvin A. Vens ("Vens") was present in propria persona and appeared on behalf of Respondent Midwest Insurance Counselors, Inc. dba Avondale/Goodyear Mann Insurance Agency ("the Mann Agency"). The following people testified at the hearing: Jacque Hale-Caddell, Samuel Morris, Joyce Fox, Joe Ford, Jr., Della Weisbeck, Richard Page, Gordon J. Dreager, Joanna Taylor, Marvin A. Vens and Investigator Arnold Sniegowski.

On August 23, 1994, acting pursuant to A.R.S. § 20-150, the Director delegated all of his authority, power, duties and functions, whether ministerial or discretionary, vested in the Director to Gregory Y. Harris to act as the Administrative Law Judge in this matter. On November 17, 1994, the Director delegated all of his authority, power, duties, and functions, whether ministerial or discretionary, vested in the Director to Lewis D. Kowal to act as Administrative Law Judge in this matter and the Director revoked the previous delegation to Gregory Y. Harris.

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Count II - Blondy's Drywall

13. On October 16, 1991, the Mann Agency received a \$600.00 check from Mary Korson for a workers' compensation policy for Blondy's Drywall.

14. On November 14, 1991, the Mann Agency received a \$650.00 check from Mary Korson as the second premium payment towards the workers' compensation policy for Blondy's Drywall.

15. Both of the checks which Mary Korson provided to the Mann Agency, \$600.00 and \$650.00, were deposited by the Mann Agency into its account with Security Pacific Bank.

16. Vens and the Mann Agency failed to forward an application and premium payment to any insurer and did not obtain a workers' compensation policy for Blondy's Drywall.

17. Neither Vens nor the Mann Agency reimbursed Blondy's Drywall the \$1,250.00 premium payment made to the Mann Agency for workers' compensation coverage it never received.

Count III - Arkay Drapery Co.

18. Count III of the Notice of Hearing included allegations that Vens failed to obtain additional information concerning a tenant liability policy application for Arkay Drapery Co. ("Arkay") and did not resubmit the application to Auto-Owners. Mr. Jon Jorgensen, the underwriting manager of the Mesa branch office of Auto-Owners, stated in a letter marked as State's Exhibit #20 that the Arkay policy was never issued due to either the agent or Auto-Owners and that he could not determine who was at fault. Substantial evidence was not presented at the hearing to permit a determination as to what caused Arkay Drapery

1 Co. not to have tenant liability insurance coverage and who  
2 should be held responsible.

3 Count IV - John Thome/Samuel Morris

4 19. On November 19, 1991, the Mann Agency received  
5 \$256.00 from an escrow account involved in the sale of Samuel  
6 Morris' house located at 13216 S. Tuthill, Buckeye, Arizona 85326  
7 (the "Buckeye residence") to John Thome. Samuel Morris deposited  
8 the \$256.00 into the escrow account.

9 20. Vens testified that he accepted the \$256.00  
10 premium payment, had an completed application signed by John  
11 Thome in November, 1991 and forwarded that application to  
12 Auto-Owners for insurance coverage.

13 21. Vens provided to Mr. Thome and Mr. Morris a copy  
14 of a Memorandum of Homeowners Policy as proof of insurance  
15 coverage by Auto-Owners on the Buckeye residence for November 25,  
16 1991 to November 25, 1992.

17 22. In December, 1992, Vens testified that he first  
18 learned that the \$256.00 was paid by Mr. Morris and not Mr. Thome.

19 23. Richard Page, the Southwest Regional Vice  
20 President of Auto-Owners, testified that Auto-Owners has no  
21 record of receiving an application for insurance coverage on the  
22 Buckeye residence and did not issue such coverage.

23 24. Vens testified that he attempted to contact Mr.  
24 Thome to return the \$256.00 premium payment but could not locate  
25 him.

26 25. Vens and the Mann Agency failed to forward any  
27 documentation or premium payment regarding insurance coverage on  
28 the Buckeye residence to Auto-Owners.

1           26. On January 23, 1993, Vens reimbursed Mr. Morris  
2 the \$256.00 premium payment by check number 1584 issued from the  
3 checking account of A.G.M. Insurance Co., which had purchased the  
4 Mann Agency on December 1, 1990.

5                           Count V - Joyce Fox

6           27. On November 25, 1991, the Mann Agency received a  
7 \$1,009.00 check from Joyce Fox for a homeowners insurance policy  
8 to be issued through Auto-Owners.

9           28. Joyce Fox's \$1009.00 check was deposited into the  
10 Mann Agency's account at Security Pacific Bank.

11           29. Vens signed the homeowners declaration sheet  
12 indicating insurance coverage for November 22, 1991 to November  
13 22, 1992 through Auto-Owners and sent that declaration sheet  
14 along with an Auto-Owners policy to Joyce Fox.

15           30. Auto-Owners currently operates a "paperless  
16 system", it only checked its computer records for reference as to  
17 coverage on Joyce Fox's residence. Auto-Owners has no records  
18 indicating that it ever received an application for coverage on  
19 Joyce Fox's residence. Therefore, Auto-Owners could not verify  
20 coverage for Joyce Fox from November 22, 1991 to November 22,  
21 1992. The computer records of Auto-Owners would reflect if an  
22 application on behalf of Joyce Fox was ever received, processed,  
23 issued or rejected by Auto-Owners.

24           31. Vens and the Mann Agency failed to forward any  
25 documentation and \$1,0009.00 premium payment regarding insurance  
26 coverage on Joyce Fox's residence to Auto-Owners and  
27 misappropriated or converted the \$1,009.00 premium payment.

28                           Count VI - Herb White

1           32. On December 5, 1991, Vens received a completed  
2 application and a \$194.00 check from Herb White for a dwelling  
3 liability insurance policy for a residence located at 1081 W. 3rd  
4 Street, Avondale, Arizona ("Avondale residence") to be issued  
5 through Auto-Owners.

6           33. Vens and the Mann Agency failed to forward Mr.  
7 White's \$194.00 premium payment and December 5, 1991 application  
8 on the Avondale residence to Auto-Owners and misappropriated or  
9 converted the \$194.00 premium payment.

10           34. On January 23, 1992, Vens received a completed  
11 application and \$238.00 check from Herb White for a dwelling  
12 liability policy for a residence located at 6202 N. 138th Drive,  
13 Glendale, Arizona ("Glendale residence") to be issued through  
14 Auto-Owners.

15           35. The Mann Agency forwarded the application for the  
16 Glendale residence to Auto-Owners and a declaration sheet  
17 indicating coverage for the period January 23, 1992 to January  
18 23, 1993 prepared by Auto-Owners was forwarded to Vens.

19           36. Vens and the Mann Agency failed to forward to Herb  
20 White a copy of the declaration sheet indicating coverage for  
21 the Glendale residence. Thus, Mr. White did not receive from the  
22 Mann Agency proof of coverage on the Glendale residence as he  
23 requested.

24           37. Of the documents contained in the Mann Agency's  
25 file on Herb White's residences, there is a declaration sheet  
26 which purports to show insurance coverage through Auto-Owners for  
27 Mr. White's Avondale residence from December 5, 1991 to December  
28 5, 1992. That declaration sheet appears to be a modified copy of

1 the declaration sheet that shows insurance coverage for Mr.  
2 White's Glendale residence and contains the same policy number as  
3 that which was assigned to the Glendale residence. The  
4 declaration sheet referred to above appears to be an altered  
5 document purporting to show insurance coverage by Auto-Owners on  
6 the Avondale residence. Neither Vens nor the Mann Agency  
7 forwarded the altered declaration sheet to Mr. White.

8 38. It is unclear as to when the altered declaration  
9 sheet was prepared and no evidence was presented at the hearing  
10 as to the identity of the person who prepared the altered  
11 document. Only employees of the Mann Agency had access to Herb  
12 White's files with the Mann Agency.

13 Count VII - Ford Pest Control

14 39. Joe S. Ford, Jr. received a renewal notice dated  
15 February 7, 1992 from Scottsdale Insurance Company ("Scottsdale")  
16 stating that Ford Pest Control's commercial general liability  
17 policy would expire on April 13, 1992 and that Scottsdale would be  
18 willing to renew the policy. The notice requested that a new  
19 application be submitted to Scottsdale.

20 40. On March 31, 1992, Mr. Ford gave Vens a \$256.00  
21 check as payment toward the premium due to renew the Scottsdale  
22 policy Mr. Ford had on his business, Ford Pest Control.

23 41. On May 8, 1992, Mr. Ford gave a secretary at the  
24 Mann Agency a \$256.00 check as payment toward the premium owed on  
25 the Ford Pest Control's policy with Scottsdale.

26 42. On June 5, 1992, Mr. Ford gave a secretary at the  
27 Mann Agency a \$246.00 check as payment towards the premium owed  
28 on the Ford Pest Control's policy with Scottsdale.



1           43. All of the checks which Mr. Ford gave to Vens and  
2 the Mann Agency were deposited into the Mann Agency's account  
3 with Security Pacific Bank.

4           44. A Certificate of Insurance dated April 1, 1992  
5 indicates that Ford Pest Control had commercial liability  
6 coverage with Scottsdale effective from April 13, 1992 to April  
7 13, 1993 . The Certificate of Insurance submitted to the Arizona  
8 Structural Pest Control indicates that the producer was the Mann  
9 Agency. The copy of the Certificate of Insurance admitted as  
10 evidence in the hearing of this matter (State's Exhibit #47) does  
11 not contain any signature including that of Marvin A. Vens.  
12 Vens' name is typed on that document as being the authorized  
13 representative.

14           45. Scottsdale never received a request to renew the  
15 policy on Ford Pest Control from either Mr. Ford or the Mann  
16 Agency.

17           46. Vens and the Mann Agency failed to forward the  
18 \$755.00 premium payments and application on behalf of Mr. Ford to  
19 Scottsdale and misappropriated or converted the \$755.00 premium  
20 payments.

21           47. During the time period from April 13, 1992 through  
22 April 13, 1993, Scottsdale did not issue commercial general  
23 liability coverage for Ford Pest Control. It was only after  
24 April 13, 1993 when the Department became involved in this  
25 matter, did Scottsdale agree to retroactively assume coverage for  
26 Ford Pest Control from April 13, 1992 to April 13, 1993.

27                           Count V - Sessions Garage

28

1           48. On March 1, 1992, at the request of Jim Sessions,  
2 Vens obtained a commercial liability insurance policy for  
3 Sessions Garage through Auto-Owners.

4           49. On March 1, 1992, Vens failed to obtain coverage  
5 for Sessions' 1970 Chevrolet tow truck as requested by Mr.  
6 Sessions.

7           50. Upon receiving his commercial policy, Mr. Sessions  
8 contacted Vens to inquire about coverage for his 1970 Chevrolet  
9 tow truck. On March 24, 1992, Vens issued to Mr. Sessions an  
10 insurance binder and Arizona Automobile Insurance Card which  
11 identified Auto-Owners as the insurance carrier.

12           51. Vens and the Mann Agency did not submit the  
13 appropriate documentation to Auto-Owners regarding automobile  
14 liability coverage on Mr. Sessions' 1970 tow truck for the period  
15 March, 1992 to February, 1993.

16           52. Auto-Owners received full documentation and  
17 underwriting information from the Mann Agency on Mr. Sessions'  
18 1970 tow truck in March, 1993 and issued coverage on the 1970 tow  
19 truck at that time.

#### 20                           CONCLUSIONS OF LAW

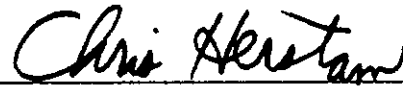
21           1. Respondents' conduct described constitutes a  
22 record of dishonesty in business and financial matters under  
23 A.R.S. § 20-290(B)(2).

24           2. Respondents' conduct constitutes the existence of  
25 any cause for which original issuance or any renewal of an  
26 insurance license could have been refused such that Respondents'  
27 licenses may be suspended or revoked under A.R.S. §§20-316(A)(1)  
28 and 20-290(B)(2).

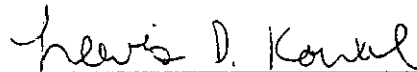


1                   4. Midwest Counsellors, Inc. dba Avondale/Goodyear  
2 Mann Insurance Agency and Marvin A. Vens shall be jointly and  
3 severally liable to make restitution payments of: a) \$1,250.00  
4 to Blondy's Drywall; b) \$1,009.00 To Joyce Fox; and c) \$194.00 to  
5 Herb White within 20 days of this order. Proof that restitution  
6 payments have been made shall be filed with the Arizona  
7 Department of Insurance within 45 days of the date of this Order.

8                   EFFECTIVE this 11th day of January, 1995.

9  
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11 CHRIS HERSTAM  
12 Director of Insurance

13 

14 LEWIS D. KOWAL  
15 Administrative Law Judge

16                   NOTIFICATION OF RIGHTS

17                   The aggrieved party may request a rehearing with  
18 respect to this Order by filing a written petition with the  
19 Administrative Law Division within 30 days of the date of this  
20 Order, setting forth the basis for such relief pursuant to A.A.C.  
21 R4-14-114(B). The final decision of the Director may be appealed  
22 to the Superior Court of Maricopa County for judicial review  
23 pursuant to A.R.S. §20-166.

24 . . .

25 . . .

1 COPY of the foregoing mailed/delivered  
2 this 11th day of January, 1995, to:

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

10 Kathryn Leonard  
11 Assistant Attorney General  
12 1275 West Washington  
13 Phoenix, AZ 85007

14 Midwest Insurance Counselors, Inc.  
15 dba Avondale/Goodyear Mann  
16 Insurance Agency  
17 Box 47  
18 Goodyear, AZ 85338

19 Marvin A. Vens  
20 7214 N. 45th Ave.  
21 Glendale, AZ 85301

22 A M G Insurance Agency, Inc.  
23 5130 N. 19th Ave., #5  
24 Phoenix, AZ 85015

25 Auto-Owners Insurance Company  
26 6101 Anacapri Blvd.  
27 Lansing, MI 48917

28 Auto-Owners Life Insurance Company  
P.O. Box 30660  
Lansing, MI 48909-8160

Bankers Insurance Company  
10051 5th Street, N.  
St. Petersburg, FL 33702

CNA Insurance Companies  
CNA Plaza  
Chicago, IL 60685

Employers Modern Life Company  
P.O. Box 712  
Des Moines, IA 50303

Employers Mutual Casualty Company  
P.O. Box 35250  
Phoenix, AZ 85069-5250

- 1 Franklin Life Insurance Company  
#1 Franklin Square  
2 Springfield, IL 62713
- 3 Lone Star Life Insurance Company  
P.O. Box 879008  
4 Dallas, TX 75287-9008
- 5 Principal Mutual Life Insurance Company  
711 High Street  
6 Des Moines, IA 50392
- 7 Statewide Insurance Corp.  
P.O. Box 52048  
8 Phoenix, AZ 85072
- 9 United General Life Insurance Company  
5335 66th Street, N.  
10 St. Petersburg, FL 33709
- 11 Herbert White  
302 E. Congress  
12 Tucson, AZ 85701-1812
- 13 Jacque Caddell  
P.O. Box 478  
14 Cashion, AZ 85329
- 15 Jim Sessions  
238 W. Western Ave.  
16 Avondale, AZ 85323
- 17 Joe Ford, Jr.  
319 Los Amigos  
18 Avondale, AZ 85323
- 19 Joyce Fox  
2118 Encanto Dr., SW  
20 Phoenix, AZ 85007
- 21 Mary Korson  
c/o Blondy's Drywall  
22 5932 W. Bell Rd., D-106  
Glendale, AZ 85308
- 23 Kay Kluczniac  
24 c/o Arkay Drapery Co.  
16065 Grand Ave.  
25 Surprise, AZ 85374
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Samuel Morris  
9009 S. Cactus  
Sun Lakes, AZ 85248

*Chris Crawford*  
Chris Crawford