

MAY 12 1997

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

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In the Matter of)
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GERARD HENRY LILLEY)
dba JERRY LILLEY)
)
License No. 24719)
)
Respondent.)
_____)

Docket No. 97A-081

CONSENT ORDER

The Arizona Department of Insurance, ("Department"), has received evidence that Gerard Henry Lilley ("Respondent"), violated the provisions of Title 20, Arizona Revised Statutes. Respondent wishes to resolve this matter without the commencement of formal proceedings, and admits the following Findings of Fact are true and consents to entry of the following Conclusions of Law and Order.

FINDINGS OF FACT

1. Respondent, at all material times, held an Arizona license to transact life, disability and variable annuity business as an agent, license number 24719. The licenses held by Respondent expired effective February 28, 1997.
2. Commencing on or about July 14, 1994, Respondent represented Metropolitan Life Insurance Company (MetLife) as an agent.
3. On or about August 10, 1995, Respondent received an application for a fixed annuity contract through MetLife from Lydia Gerz ("Ms. Gerz"), to be effective August 10, 1995. In

1 conjunction with this application, Respondent also accepted Ms. Gerz's check, in the amount of
2 four-thousand-seven-hundred dollars (\$4700) for the purpose of funding the fixed annuity contract.
3 Ms. Gerz left blank the name of the payee on the check.

4 4. Also on or about August 10, 1995, Respondent wrote his own name as payee on the check
5 received from Ms. Gerz and deposited the check into a personal account held by Respondent at the
6 Arizona Federal Credit Union.

7 5. Respondent failed to forward the payment and application received from Ms. Gerz to
8 MetLife.

9 6. Respondent destroyed the application completed by Ms. Gerz.

10 7. On or about November 6, 1996, Respondent admitted to Ms. Gerz that he had failed to
11 forward her application and payment to MetLife and that the fixed annuity contract had never been
12 issued.

13 8. On November 6, 1996, Respondent executed a promissory note in which he promised to
14 pay Ms. Gerz five-thousand-two-hundred and twenty dollars (\$5220) with interest by July 1997.
15 This amount represents the sum paid to Respondent by Ms. Gerz plus interest.

16 9. On or about December 26, 1996, MetLife agreed to refund Ms. Gerz's original payment of
17 \$4700 plus interest rather than issue the contract originally offered.

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1 **CONCLUSIONS OF LAW**

2 1. The Director has jurisdiction over this matter.

3 2. Respondent's conduct with respect to destroying the application received from Ms. Gerz
4 constitutes the failure to keep available and open all records for inspection of the director, within
5 the meaning of A.R.S. §20-302(C).

6 3. Respondent's conduct as described above constitutes the wilful violation of, or wilful
7 noncompliance with, any provision of Title 20, or any lawful rule, regulation or order of the
8 director, pursuant to A.R.S. §20-316(A)(2).

9 4. Respondent's failure to forward the full premium to MetLife constitutes misappropriation
10 or conversion to his own use or illegal withholding of monies belonging to policyholders, insurers,
11 beneficiaries or others and received in or during the conduct of business under the license or
12 through its use, within the meaning of A.R.S. §20-316(A)(4).

13 5. Respondent's conduct as described above constitutes a conduct of affairs under the license
14 showing him to be incompetent or a source of injury and loss to, or repeated complaint by, the
15 public or any insurer, within the meaning of A.R.S. §20-316(A)(7).

16 6. Respondent's failure to forward the full premium to MetLife constitutes diversion of the
17 monies of an insurer or other person, within the meaning of A.R.S. §20-463(A)(4)(a) and (b).

18 7. Grounds exist for the Director to suspend, revoke, or refuse to renew the insurance
19 license(s) held by Respondent or to order Respondent to pay civil penalties, or both, pursuant to
20 A.R.S. § 20-316(A) and (C).

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ORDER

IT IS ORDERED THAT:

1. Respondent shall pay restitution to Metropolitan Life Insurance Company in the amount of five-thousand-thirty-one dollars and thirty-five cents (\$5,031.35).

2. Respondent shall pay a civil penalty in the amount of one-thousand dollars (\$1,000) to the Director for remission to the State Treasurer for deposit in the State General Fund. Respondent shall pay two-hundred-fifty dollars (\$250) immediately upon issuance of this order, and shall pay the remaining balance at the rate of two-hundred-fifty dollars (\$250) per month on the first day of the three consecutive months immediately succeeding issuance of this order.

DATED AND EFFECTIVE THIS 8th day of May, 1997.


JOHN A. GREENE, DIRECTOR
DEPARTMENT OF INSURANCE

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CONSENT TO ORDER

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1. Respondent has reviewed the foregoing Findings of Fact, Conclusions of Law and Order.

2. Respondent admits the jurisdiction of the Director of Insurance, State of Arizona, and admits the foregoing Findings of Fact and consents to the entry of the foregoing Conclusions of Law and Order.

3. Respondent is aware of his right to notice and a hearing at which he may be represented by counsel, present evidence and cross-examine witnesses. Respondent irrevocably waives his right to such notice and hearing and to any court appeals relating to this consent order.

4. Respondent states that no promise of any kind or nature whatsoever, except as expressly contained in this Consent Order, was made to him to induce him to enter into this Consent Order and that he has entered into this Consent Order voluntarily.

5. Respondent acknowledges that the acceptance of this Consent Order by the Director of Insurance, State of Arizona, is solely to settle this matter against him and does not preclude any other agency, officer or subdivision of this state from instituting civil or criminal proceedings as may be appropriate now or in the future.

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Date

Gerard H. Lilley
Gerard Henry Lilley
License Number 24719

1 Copies of the foregoing mailed this 12th day of May, 1997.

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3 Gerard Henry Lilley
4 1118 West Breckenridge Avenue
5 Gilbert, Arizona 85233

6 Gerard Henry Lilley
7 5150 North 16th Street, Building C
8 Phoenix, Arizona 85016

9 Charles R. Cohen, Deputy Director
10 John Gagne, Assistant Director
11 Maureen Catalioto, Licensing Supervisor
12 Arizona Department of Insurance
13 2910 North 44th Street, Suite 210
14 Phoenix, Arizona 85018

15 Lydia Gerz
16 646 South Portland
17 Mesa, Arizona 85206

18 Barbara J. Gardner, Vice President
19 Metropolitan Life Insurance Company
20 Met-Life Customer Service Center - Tulsa
21 P.P. Box 500 Tulsa, Oklahoma 74102-0500

22 
23 Curvey Walters Burton