

JUL 15 1999

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

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In the Matter of: )  
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BARRY CARTER, )  
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Respondent. )  
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Docket No. 99A-095-INS

**NOTICE**

On June 16, 1999, the Office of Administrative Hearings, through Administrative Law Judge Lewis D. Kowal, issued a Recommended Decision of Administrative Law Judge ("Recommended Decision"), a copy of which is attached and incorporated by this reference. Pursuant to A.R.S. § 41-1092.08(B), the Director of the Department of Insurance declines to review the Recommended Decision. Under A.R.S. § 41-1092.08 (F)(1), the Recommended Decision is the final administrative decision in this matter.

**NOTIFICATION OF RIGHTS**

Pursuant to A.R.S. § 41-1092.09, the aggrieved party may request a rehearing with respect to this Order by filing a written motion with the Director of the Department of Insurance within 30 days of the date of this Order, setting forth the basis for relief under A.A.C. R20-6-114(B).

The final decision of the Director may be appealed to the Superior Court of Maricopa County for judicial review pursuant to A.R.S. §§ 12-904 and 20-166. A party filing an appeal must

1 notify the Office of Administrative Hearings of the appeal within ten days after filing the complaint  
2 commencing the appeal, pursuant to A.R.S. § 12-904(B).

3 DATED this 15<sup>th</sup> of July, 1999

4 

5 \_\_\_\_\_  
6 Charles R. Cohen  
7 Director of Insurance

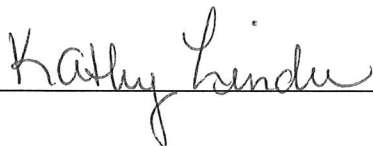
8 A copy of the foregoing mailed  
9 this 15 day of July, 1999

10 Sara M. Begley, Deputy Director  
11 Gerrie L. Marks, Exec. Assistant for Regulatory Affairs  
12 Catherine O'Neil, Legal Affairs Officer  
13 John Gagne, Assistant Director  
14 Maureen Catalioto, Supervisor  
15 Department of Insurance  
16 2910 N. 44th Street, Suite 210  
17 Phoenix, AZ 85018

18 Office of Administrative Hearings  
19 1400 W. Washington, Suite 101  
20 Phoenix, AZ 85007

21 Michael J. De La Cruz  
22 Assistant Attorney General  
23 1275 W. Washington  
Phoenix, AZ 85007

Barry Carter  
9426 E. Jenan Drive  
Scottsdale, AZ 85260

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**IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

In the Matter of:

No. 99A-095-INS

**BARRY CARTER,**

**RECOMMENDED DECISION  
OF ADMINISTRATIVE  
LAW JUDGE**

**Respondent.**

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**HEARING:** June 9, 1999

**APPEARANCES:** Barry Carter on his own behalf; Assistant Attorney General  
Michael J. De La Cruz on behalf of the Arizona Department of Insurance

**ADMINISTRATIVE LAW JUDGE:** Lewis D. Kowal

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**FINDINGS OF FACT**

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1. On March 5, 1999, Barry Carter ("Mr. Carter") submitted an application for an individual life insurance agent license (the "Application") to the Arizona Department of Insurance (the "Department").

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2. In the Application, Mr. Carter disclosed that on March 31, 1995, Judgment was entered against him in Terrence J. Walsh v. Barry Carter, Maricopa County Superior No. CV 93-20265. In that Judgment, the Court found that Mr. Carter treated the corporate funds of the Arizona Workers Assessment and Recovery Centers, Inc. ("AWARE") as his own; those funds were used to pay unauthorized expenses; that Mr. Carter made fraudulent representations to the Plaintiffs in order to induce them to loan money to AWARE and fraudulently failed to disclose material facts to Plaintiffs. The Court determined that AWARE was the alter ego of Mr. Carter and that Mr. Carter be held personally responsible for AWARE's indebtedness to Plaintiffs.

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3. In the above-mentioned civil proceeding, the Court awarded judgment to Plaintiffs and against Mr. and Mrs. Carter in the amount of \$27,500.00 plus interest at the rate of 10% per annum from April 7, 1992 until paid; and in the principal amount of

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1 \$44,000.00 plus interest at the rate of 10% per annum from April 16, 1992 until paid, for  
2 taxable costs in the amount of \$367.50; and for attorney's fees in the amount of  
3 \$10,000.00.

4 4. On March 17, 1999, the Department denied the Application pursuant to  
5 A.R.S. §§20-290(B)(2) and (B)(3). On April 14, 1999, Mr. Carter timely filed a request  
6 for hearing on the denial of the Applications.

7 5. During the hearing, Mr. Carter admitted responsibility for the above-  
8 mentioned judgment and represented that he had been making payments on the  
9 judgment until he depleted his savings and could not afford further payments until he  
10 secured employment. Mr. Carter represented that, if he obtains an insurance agent's  
11 license, he intends to satisfy the judgment and resume making payments. Mr. Carter  
12 testified that he has paid approximately \$18,000.00 on the judgment.

13 6. Mr. Carter's background shows him to be interested in the community with  
14 respect to sports. Mr. Carter has acted as a volunteer coach for Arizona State  
15 University's ("ASU") rugby team, has been involved in organizing Formula 1 racing in  
16 Europe and currently acts as an assistant coach for ASU's women's rugby team.

17 7. Since his involvement in AWARE, Mr. Carter has worked as a consultant in  
18 sales and marketing for several companies dealing with health foods and sports  
19 nutrition.

20 8. After the issuance of the above-mentioned judgment, Mr. Carter was  
21 employed in several capacities, which necessarily involved his ability to control funds.  
22 One of those positions was in a business venture initiated by Professor Robert Kaplan  
23 ("Professor Kaplan"). Professor Kaplan testified that Mr. Carter's control and use of  
24 corporate funds as well as the record keeping and accountability of the funds were  
25 done properly and in an efficient manner.

26 9. The credible evidence of record establishes that Mr. Carter does not have  
27 any criminal history.  
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1           10. During the hearing, Mr. Carter presented the testimony of four witnesses  
2 who testified as to Mr. Carter's good character, reputation in the business community  
3 and that he is a person of high integrity.

4           11. Two of the witnesses, E. Reid Southern ("Mr. Southern"), an attorney  
5 admitted to practice in the State of Arizona who has known him since the mid-1970s,  
6 and Professor Kaplan, a retired professor of Economics and Finance who has known  
7 him since 1980, were made aware of the above-mentioned judgment through  
8 disclosures made by Mr. Carter, have loaned Mr. Carter monies that were subsequently  
9 repaid in full, have had business dealings with Mr. Carter, have become friends of Mr.  
10 Carter through those business dealings, and trust him with funds.

11           12. The other two character witnesses, Richard Garrido ("Mr. Garrido") and  
12 David Leastman ("Mr. Leastman"), are employed by the College Fund Life Division of  
13 Mid-West National Life Insurance Company of Tennessee ("College Fund"), with whom  
14 Mr. Carter has been offered a position if he is successful in obtaining an insurance  
15 agent's license. Mr. Carter had the same business opportunity available when he  
16 applied for an insurance agent's license in March, 1998, that was denied. After the  
17 denial, although unusual, because of the favorable impression Mr. Carter had made,  
18 the College Fund created a consultant position for him. As a consultant for the College  
19 Fund, Mr. Carter assists in arranging seminars at businesses and schools. In that  
20 capacity, Mr. Carter does not sell any insurance policies. If Mr. Carter were licensed,  
21 he could be used more effectively by the College Fund and engage in the sale of its  
22 program, which necessarily involves the selling of life insurance policies.

23           13. Prior to being offered employment with the College Fund, Mr. Carter  
24 disclosed the existence of the above-mentioned judgment. Both Mr. Garrido and Mr.  
25 Leastman testified very highly of Mr. Carter in terms of his character, work ethic and  
26 accomplishments.

27           14. The testimony of Messrs. Carter, Southern, Kaplan, Garrido, and Leastman  
28 as set forth above, is determined to be credible.  
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**CONCLUSIONS OF LAW**

1. Based on the above Findings of Fact, Mr. Carter has a record of dishonesty in business or financial matters, within the meaning of A.R.S. §20-290(B)(2).

2. Based on the above Findings of Fact, Mr. Carter has a record of misappropriation, conversion or irregular withholding of monies belonging to policyholders, insurers, beneficiaries or others received in the conduct of business in this state or elsewhere, within the meaning of A.R.S. §20-290 (B)(3).

3. The Director has discretionary authority pursuant to A.R.S. §§20-290 (B)(2) and (B)(3) to deny the Application.

4. Mr. Carter sustained his burden by establishing by a preponderance of the evidence that he is qualified to hold an insurance agent's license and that the Department's denial of the Application should be reversed.

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**RECOMMENDED ORDER**

Under the particular facts and circumstances of this matter, and notwithstanding the above-determinations that Mr. Carter has a record of misappropriation, conversion or irregular withholding of monies belonging to others and a record of dishonesty in business or financial matters, the Administrative Law Judge recommends that the Director exercise his discretion favorably by reversing the license denial and granting the Application.

Done this day, June 16, 1999.

  
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LEWIS D. KOWAL  
Administrative Law Judge

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Original transmitted by mail this  
16 day of June, 1999, to:

Charles R. Cohen, Director  
Department of Insurance  
ATTN: Curvey Burton  
2910 North 44th Street, Ste. 210  
Phoenix, AZ 85018

By Chris Crawford Thomas