

JUN 5 2000

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

DEPT. OF INSURANCE
BY Kath

In the Matter of:)	Docket No. 99A-127-INS-resubmit2
)	
GARY STUART MILLER, dba)	ORDER
AMERICAN ALTERNATIVE)	
CONSUMER CONCEPTS,)	
)	
Respondent.)	
)	

On May 31, 2000, the Office of Administrative Hearings, through Administrative Law Judge Robert I Worth, issued a Decision and Recommended Order ("Recommended Order"), a copy of which is attached and incorporated by this reference. The Director of the Department of Insurance has reviewed the Recommended Order and enters the following order.

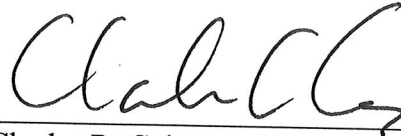
1. The Recommended Findings of Fact, Conclusions of Law and Recommended Order are adopted.
2. The Respondent's insurance agent licenses are revoked, effective immediately.

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). Pursuant to A.R.S. § 41-1092.09, it is not necessary to request a rehearing before filing an appeal to Superior Court.

1 The final decision of the Director may be appealed to the Superior Court of Maricopa
2 County for judicial review pursuant to A.R.S. § 20-166. A party filing an appeal must notify the Office
3 of Administrative Hearings of the appeal within ten days after filing the complaint commencing the
4 appeal, pursuant to A.R.S. § 12-904(B).

5 DATED this 5th of June, 2000

6
7 

8 Charles R. Cohen
9 Director of Insurance

10 A copy of the foregoing mailed
11 this 5 day of June, 2000

12 Sara M. Begley, Deputy Director
13 Gerrie L. Marks, Exec. Assistant for Regulatory Affairs
14 Mary Butterfield, Assistant Director
15 Maureen Catalioto, Supervisor
16 Arnold Sneigowski, Investigations Supervisor
17 Catherine O'Neil, Legal Affairs Officer
18 Arizona Department of Insurance
19 2910 N. 44th Street, Suite 210
20 Phoenix, AZ 85018

21 Office of Administrative Hearings
22 1400 W. Washington, Suite 101
23 Phoenix, AZ 85007

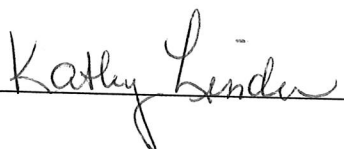
Michael De La Cruz
Assistant Attorney General
1275 W. Washington
Phoenix, AZ 85007

Gary Stuart Miller
Van Leer Insurance Agency
2939 E. Indian School Road
Phoenix, AZ 85016

- 1 Gary Stuart Miller
815 N. 52nd Street, #2360
- 2 Phoenix, AZ 85008
- 3 American Community Mutual Insurance Company
39201 Seven Mile Road
- 4 Livonia, MI 48152
- 5 American Guardian Life Assurance Company
980 Harvest Drive, Suite 200
- 6 Blue Bell, PA 19422
- 7 Combined Insurance Company of America
123 N. Wacker Drive
- 8 Chicago, IL 60606
- 9 EPIC Life Insurance Company
P.O. Box 14196
- 10 Madison, WI 53714
- 11 Federal Kemper Life Assurance Company
One Kemper Drive, T-1
- 12 Long Grove, IL 60049-0001
- 13 First Colony Life Insurance Company
P.O. Box 1280
- 14 Lynchburg, VA 24505
- 15 First Penn-Pacific Life Insurance Company
1801 South Meyers Road
- 16 Oakbrook Terrace, IL 60181-5214
- 17 National Travelers Life Company
820 Keosauqua Way
- 18 Des Moines, IA 50309
- 19 North American Co. for Life and Health
P.O. Box 466
- 20 Chicago, IL 60690-0466
- 21 Pioneer Life Insurance Company
1750 E. Gold Road
- 22 Schaumburg, IL 60173
- 23

- 1 Security Life Insurance Company of America
10901 Red Circle Drive
- 2 Minnetonka, MN 55343
- 3 Time Insurance Company
P.O. Box 3050
- 4 Milwaukee, WI 53201-3050
- 5 Trustmark Insurance Company
400 Field Drive
- 6 Lake Forst, IL 60045-2581
- 7 UNUM Life Insurance Company
2211 Congress Street
- 8 Portland, ME 04122
- 9 Gem Insurance Company
P.O. Box 449
- 10 Salt Lake City, UT 84110-0449
- 11 Midland Life Insurance Company
250 E. Broad Street
- 12 Columbus, OH 43215
- 13 West Coast Life Insurance Company
P.O. Box 193892
- 14 San Francisco, CA 94119

- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23



STATE OF ARIZONA
IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In The Matter Of:

Docket No. 99A-127-INS-resubmit2

GARY STUART MILLER, dba
AMERICAN ALTERNATIVE
CONSUMER CONCEPTS,

DECISION AND RECOMMENDED ORDER

Respondent.

This matter came on for hearing on May 16, 2000. The Arizona Department of Insurance (herein called "the "Department") was represented by Assistant Attorney General, Michael J. De La Cruz, and the Respondent failed to appear. Evidence and testimony were presented, and based upon the entire case record, including all filed pleadings, the following Findings of Fact, Conclusions of Law and Recommended Order have been prepared and are hereby submitted by the Administrative Law Judge for review, consideration, approval and adoption by the Director of the Department (herein called the "Director").

FINDINGS OF FACT

1. The start of the scheduled hearing was delayed for approximately twenty minutes so as to afford additional time for Respondent to appear. However, Respondent did not appear individually or through any proper legal representative.

Office of Administrative Hearings
1400 West Washington, Suite 101
Phoenix, Arizona 85007
(602) 542-9826

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

2. Respondent, Gary Stuart Miller, customarily using the "D.B.A." of American Alternative Consumer Concepts, a name that was registered with the Department, had been the holder of life and disability and also property and casualty insurance agent licenses issued by the Department (Number 782258).

3. The above-described insurance licenses were allowed to expire on March 31, 2000 after not being timely renewed. However, the instant disciplinary proceedings had been commenced prior to such expiration date and are expressly authorized pursuant to the provisions of A.R.S. §20-316.01.

4. The Department's uncontroverted evidence revealed that on or about March 6, 1996, while serving as a producer/agent for North American Company for Life and Health Insurance, Respondent undertook to obtain life insurance policies for Ronald Taylor and his fiancée, Pamela Legault. The required applications were completed and Respondent collected from these clients their cash payments in the respective sums of \$134.93 and \$75.00 representing the first premium amounts.

5. The communicated objectives of the cash payments, confirmed by separate written receipts given for each such payment, were to support and accompany the submission of applications for separate life insurance policies. When issued, these policies were believed to serve as a helpful factor in the ability of these applicants to more easily qualify for a home mortgage as part of a contemplated residential purchase.

6. Although both the applications and the payments given to Mr. Miller were to have been promptly submitted by Respondent to the company for approval and policy

1 issuance, in accordance with his producer's agreement, neither the completed
2 applications nor any portion of the collected funds were forwarded to the insurance
3 company. Instead, as subsequently admitted by Respondent to his clients, Mr. Miller
4 used the cash payment proceeds for his own use, reportedly to satisfy bail for himself
5 following some criminal problems. As a direct consequence of Respondent's failure to
6 transmit these applications and monies, no policies were ever issued. (Mr. Miller's
7 agreement with North American Company for Life and Health Insurance was terminated
8 on September 20, 1996 for not meeting minimum production level expectations).

9
10 7. In June, 1996, more than three months after having collected the cash payment,
11 Mr. Miller did utilize his own funds to obtain money orders in the respective amounts of
12 \$156.00 and \$54.00 which were to accompany new applications for insurance policies
13 from another potential insurer, First Penn Pacific, a company with whom Respondent
14 had signed an appointment agreement on April 10, 1996 enabling the placement of
15 insurance policies through GFSC, Inc., the general agent.

16
17 8. It was shown that although on June 6, 1996, Respondent had his clients
18 complete new applications to First Penn Pacific and was holding the money orders for
19 the required initial payments, another unreasonably long period once again ensued
20 before the Mr. Miller's actual submission of these items to the insurer on or about
21 August, 19, 1996. This lack of timely action and follow-up on the part of Respondent
22 proved costly, because Mr. Rogers suffered a stroke on August 25, 1996 that ultimately
23 became the basis for a rejection of his application. The application for Ms. Legault was
24 also rejected for another medical reason. Although a refund of the advance payment
25 amounts was eventually received by Mr. Rogers and Ms. Legault directly from First
26 Penn Pacific, both individuals are effectively uninsurable at this time, traceable in some
27 degree to Respondent's unprofessional and dilatory course of conduct, reflecting a
28 reckless disregard of his obligations as a licensed insurance agent as well as of the
29 welfare and entitlements of his clients.
30

1
2 9. Documentary evidence was introduced at the hearing demonstrating that Mr.
3 Miller had been charged on March 18, 1997 with a Class 6 felony, "False Insurance
4 Claim," based upon acts committed on November 25, 1996, and an arrest warrant for
5 this charged offense was issued on March 19, 1997.

6
7 10. The above-described outstanding arrest warrant was noticed by law
8 enforcement authorities who had detained Mr. Miller on February 5, 1998 for a D.U.I.
9 offense.

10
11 11. A guilty plea agreement by Respondent resulted in the transfer of the pending
12 criminal action from the Superior Court to the Lake Havasu Justice Court. Under the
13 agreement, the felony charges were dismissed, and Mr. Miller was instead convicted of
14 a Class I misdemeanor, "False Insurance Claim," for which he received a sentence of
15 unsupervised probation for two years plus a duty to pay restitution of \$4,367.70
16 commencing December 10, 1998. It was not shown that Respondent complied or is still
17 complying with his obligation to remit monthly payments. However, the evidence did
18 tend to indicate that separate warrants for Mr. Miller's arrest were issued based
19 purportedly upon his failure to appear for formal sentencing by the Court and for failing
20 to comply with required fine payments.

21
22 12. None of the foregoing criminal history was disclosed by Respondent to the
23 Department on the last renewal application form filed by Mr. Miller in mid-February,
24 1998 despite the clear contents of specific questions on the application form as to the
25 pendency or conclusion of any criminal proceedings against the licensee who was
26 seeking renewal. These questions sought disclosure of any allegations or convictions
27 of crimes involving (a) dishonesty in business or financial matters, (b) fraud or
28 misrepresentation, or (c) any cause arising out of an insurance transaction. Disclosure
29
30

1
2 by Respondent of the charged offenses that led to the guilty plea agreement and
3 ultimate conviction was expressly required under the Department's renewal form
4 language.

5
6 13. Although it appeared that Respondent was or should reasonably have been
7 aware of the above-described criminal allegations and charges, all questions on the
8 submitted renewal application pertaining to any criminal proceedings since the last
9 renewal date or the date of license issuance were answered in the negative by
10 Respondent.

11
12 14. By his failure to attend and to participate in the scheduled hearing, Mr. Miller
13 presented no evidence in defense or in mitigation of the charges of wrongdoing in this
14 case.

15
16 **CONCLUSIONS OF LAW**

17
18 1. The undisputed evidence of record adequately established that Gary Stuart
19 Miller, acting in his capacity of an insurance agent, collected two separate cash
20 payments from individuals and thereafter failed to timely transmit any portion of such
21 payments or the accompanying applications for insurance policies to the company with
22 whom he had a producer's agreement. The evidence further demonstrated that a
23 subsequent effort was made to obtain insurance for these same individuals through
24 another insurer, but that Mr. Miller's tardy, careless and disorganized actions resulted in
25 the inability to secure the desired policies.

26
27 2. The overall course of conduct exhibited by Respondent, as proven by
28 credible evidence, constitutes the conducting of affairs under his insurance license in a
29
30

1
2 manner showing the licensee to be incompetent or a source of injury and loss to a
3 member of the public or any insurer in violation of A.R.S. §20-316(A)(7).
4

5 3. Respondent's conduct further constituted the misappropriation or conversion
6 to his own use, or the illegal withholding of monies belonging to others, and received in
7 or during the conduct of business under or through the use of his license in violation of
8 A.R.S. §20-316(A)(4).
9

10 4. Mr. Miller's conduct, including his criminal history record, also constitutes a
11 record of dishonesty by him as a licensee in business or financial matters in violation of
12 A.R.S. §20-316(A)(8), and his failure to properly disclose the pendency of those criminal
13 proceedings on his renewal application filed with the Department constituted a wilful
14 misrepresentation of a fact required to be disclosed in the application, thereby violating
15 A.R.S. §20-291(G). Additionally, such non-disclosure constituted non-compliance with
16 the provisions of Title 20 or any lawful rule, regulation or order of the director, as well as
17 constituting the existence of misrepresentation or fraud in obtaining or attempting to
18 obtain or renew any insurance license in violation of A.R.S. §20-316(A)(2) and (3)
19

20 5. The acts and/or omissions of Respondent provide more than sufficient
21 grounds, pursuant to A.R.S. §20-316(A) and (C) for the Director to suspend, revoke or
22 refuse to renew Respondent's license and also to impose a civil penalty or to order that
23 Respondent provide restitution to any party injured by the licensee's actions.
24

25 6. Under the proven facts and circumstances of this case, including the
26 presently expired status of Respondent's license and his default in appearance at the
27 scheduled disciplinary hearing, the imposition by the Director of a license revocation
28 appears to be fully warranted based upon the totality of the evidence of record.
29
30

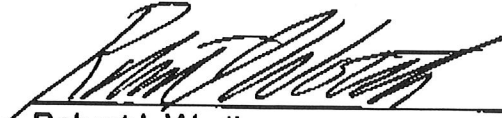
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

RECOMMENDED ORDER

In view of the foregoing, it is recommended that the Director enter an Order revoking the life and disability and also the property and casualty insurance agent licenses held by Gary Stuart Miller, doing business as American Alternative Consumer Concepts.

Dated: May 31, 2000.

OFFICE OF ADMINISTRATIVE HEARINGS



Robert I. Worth
Administrative Law Judge

Original transmitted on May 31, 2000

by: Charles R. Cohen, to:

Charles R. Cohen, Director
Arizona Department of Insurance
2910 North 44th Street (Suite 210)
Phoenix, AZ 85018

ATTN: Curvey Burton