STATE OF ARIZONA
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DEPT. OF INSURANCE
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**STATE OF ARIZONA**

**DEPARTMENT OF INSURANCE**

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| In the Matter of:<br><br>**RICHARD IRA SHEAR and ARIZONA ASSET PARTNERS I, INC.,**<br><br>Respondents. | No. 00A-010-INS<br><br>**ORDER SUMMARILY SUSPENDING LICENSES AND NOTICE OF HEARING** |

The Arizona Department of Insurance (the "Department") alleges that Richard Ira Shear ("Respondent Shear") and Arizona Asset Partners I, Inc. ("Respondent Arizona Asset"), have violated provisions of Arizona Revised Statutes ("A.R.S."), Title 20. In light of the serious nature of these allegations, the Director of Insurance for the State of Arizona ("Director") finds that the public health, safety and welfare imperatively require emergency action, within the meaning of A.R.S. § 41-1092.11(B).

THEREFORE, IT IS ORDERED summarily suspending the Arizona insurance licenses held by Respondents, effective immediately, pending the proceedings for revocation commenced this date.

EFFECTIVE this 18th day of January, 2000.

CHARLES R. COHEN, Director
Arizona Department of Insurance

## NOTICE OF HEARING

PLEASE TAKE NOTICE that pursuant to the provisions of Arizona Revised Statutes ("A.R.S.") §§ 20-161 through and including 20-165, 41-1061 through and including 41-1066 and 41-1092.01, the above-captioned matter will be heard before the Director of Insurance of the State of Arizona or his duly designated representative, on the 22nd day of February, 2000, at 9:00 a.m. at the Office of Administrative Hearings, 1400 West Washington Street, Suite 101, Phoenix, Arizona 85007 (the "Hearing").

Motions to continue this matter shall be made in writing to the Administrative Law Judge not less than fifteen (15) days prior to the date set for the hearing. A copy of any motion to continue shall be mailed or hand-delivered to the opposing party on the same date of filing with the Office of Administrative Hearings.

A.R.S. § 20-164(B) entitles any person affected by this Hearing to appear in person and by counsel, to be present during the giving of all evidence, to have a reasonable opportunity to inspect all documentary evidence, to examine witnesses, to present supporting evidence and to have subpoenas issued by the Administrative Law Judge to compel attendance of witnesses and production of evidence.

If Respondents are represented by counsel, the attorney shall be licensed to practice law in the State of Arizona or, if Respondent is an insurer, it may be represented by a corporate officer, pursuant to A.R.S. § 20-161(B).

Pursuant to A.R.S. § 41-1092.07(D), a clear and accurate record of the proceedings will be made by a court reporter or by electronic means. Any party that requests a transcript of the proceeding shall pay the cost of the transcript to the court reporter or other transcriber.

Questions concerning issues raised in this Notice of Hearing should be directed to Assistant Attorney General Michael J. De La Cruz (602) 542-3702, 1275 West Washington, Phoenix, Arizona 85007.

NOTICE OF APPLICABLE RULES

On January 23, 1992, the Arizona Department of Insurance adopted A.A.C. R20-6-101 through R20-6-115, setting forth the rules of practice and procedure applicable in contested cases before the Director of Insurance. The hearing will be conducted pursuant to these rules.

PURSUANT TO A.A.C. R20-6-106, RESPONDENTS SHALL FILE A WRITTEN ANSWER WITHIN 20 DAYS AFTER ISSUANCE OF THIS NOTICE OF HEARING AND SHALL MAIL OR DELIVER A COPY OF THE ANSWER TO THE ASSISTANT ATTORNEY GENERAL DESIGNATED ABOVE. THE ANSWER SHALL STATE RESPONDENTS' POSITION OR DEFENSE AND SHALL SPECIFICALLY ADMIT OR DENY EACH ASSERTION IN THE NOTICE OF HEARING. ANY ASSERTION NOT DENIED SHALL BE DEEMED TO BE ADMITTED. ANY DEFENSE NOT RAISED IN ANSWER SHALL BE DEEMED WAIVED. IF AN ANSWER IS NOT TIMELY FILED, RESPONDENTS SHALL BE DEEMED IN DEFAULT AND THE DIRECTOR MAY DEEM THE ALLEGATIONS ARE TRUE, AND TAKE WHATEVER ACTION IS APPROPRIATE, INCLUDING SUSPENSION, REVOCATION, DENIAL OF A LICENSE, OR RENEWAL OF A LICENSE, IMPOSITION OF A CIVIL PENALTY AND/OR ORDER RESTITUTION TO ANY PARTY INJURED.

PERSONS WITH DISABILITIES MAY REQUEST REASONABLE ACCOMMODATIONS SUCH AS INTERPRETERS, ALTERNATIVE FORMATS, OR ASSISTANCE WITH PHYSICAL ACCESSIBILITY. REQUESTS FOR ACCOMMODATIONS SHOULD BE MADE AS EARLY AS POSSIBLE TO ALLOW TIME TO ARRANGE THE ACCOMMODATIONS. IF YOU REQUIRE ACCOMMODATIONS, PLEASE CONTACT THE OFFICE OF ADMINISTRATIVE HEARINGS AT 542-9826.

The Department alleges:

1. Respondent Richard Ira Shear is currently, and was at all material times, licensed to transact life and disability and variable annuity insurance business in the state of Arizona, license number 33199, which license expires August 31, 2001.

2. Respondent Arizona Asset Partners I, Inc. is currently, and was at all material times, licensed as an agency to transact life and disability and variable annuity insurance business in the state of Arizona, license number 62020, which license expires April 30, 2000. Respondent Arizona Asset is conducting its insurance business under the assumed business names of Arizona Asset Management and Arizona Asset Administrators. Respondents failed to file a Certificate of Assumed Business Name with the Department prior to operating under the aforementioned assumed business names as required by A.R.S. § 20-318.

3. Respondent Shear is an owner and officer of Arizona Asset and is authorized to exercise the powers of Arizona Asset's license. Respondent Shear is listed as President/Chief Executive Officer of Arizona Asset.

4. Between November 1, 1999 and January 3, 2000, the Department received complaints alleging that Respondents have engaged in the following conduct: misappropriated and/or converted to their own use insurance monies belonging to either clients or carriers in an approximate amount of over $2,000,000 by surrendering life insurance policies for cash values, taken out loans from said policies for personal use and personally taken out policies on the lives of clients to receive large commissions and then allowed the policies to lapse. This conduct allegedly occurred without authorization from or the knowledge of Respondents' clients and carriers.

5. On November 4, 1999, the Department issued a subpoena duces tecum to Respondents and two other licensed insurance agents in Respondent Shear's office for the production of "any and all contracts, agreements, policies, binders, certificates, applications, correspondence, documents, memos, notes, accounting and bank records, receipts, checks, ledgers, and records of premiums and commissions received pertaining to any insurance or insurance type policies or risks placed with, sold by and or secured in behalf of or solicited by and or from the above named persons and entities."

6. On November 9, 1999, Department investigators hand-delivered the aforementioned subpoena to Respondent Shear for the immediate surrender of the requested

documents. Respondents' files were in a state of complete disarray. During the on-site inspection, Department investigators requested nine consumer files, of which Respondent Shear was only able to produce five. Respondent Shear represented that he would produce the remaining files on November 10, 1999, but failed to do so. Respondent Shear then further represented that he would produce the remaining files on November 12, 1999, but still failed to do so.

7. While on site at Respondents' office, Department investigators witnessed Respondent Shear removing select documents from the requested files. Department investigators immediately confronted Respondent Shear and specifically requested the documents that were removed from the selected files. Respondent Shear produced what he represented to be the missing documents; however, based on the chronology of the files, it appears some vital documents are missing.

8. On November 15, 1999, the Department issued a subpoena duces tecum to Respondents, Arizona Asset Management, Inc. and Arizona Asset Administrators. On November 15, 1999, Department investigators hand-delivered the subpoena to Respondents with a return date of November 18, 1999, for production of the documents.

9. The subjects of the subpoena were Pasquale and Carol Nunzio; Evelyn Simmons; Richard Laue; Charles Thomas; Bank of America account numbers 252533892, 988027032 and 252532689; and Bank One account number 07595465. The documents to be produced pursuant to the subpoena were 1) any and all contracts, agreements, policies, binders, certificates, applications, correspondence, documents, memos, notes, receipts of payment and records of premiums and commissions received pertaining to any insurance or insurance type policies or risks placed with, sold by, or secured in behalf of or solicited by and or from the individuals or entities named above and 2) copies of all monthly account statements, checks (front and back) written on and deposit slips for, each of the above-listed bank accounts from January 1, 1998 through October 31, 1999. Respondent Shear is named on or is a signatory on the four bank accounts listed above.

10. Respondent Shear produced monthly account statements for Arizona Asset Management's Bank of America account number 988027032 dated January 1, 1999 through October 31, 1999. Respondent Shear failed to provide the monthly statements for 1998 and, of the checks provided for 1999, 289 checks were missing in the series of check numbers from 2646 through 5092.

11. Respondent Shear produced monthly account statements for Arizona Asset Partners I, Inc.'s Bank of America account 252532689 for February 1 through March 31, 1999, and September 1-30, 1999. Respondent Shear failed to produce any of the monthly statements for 1998, the remaining months of 1999 and copies of 51 checks written on this account in the requested time frame.

12. Respondent Shear produced monthly account statements for Arizona Asset Administrators's Bank of America account number 252533892 for September 1-30, 1999, but failed to provide any of the monthly account statements for 1998 and the remaining months of 1999. Respondent Shear also failed to provide check numbers 1093-1100 and 1102-1140.

13. Respondent Shear failed to produce any monthly account statements for Arizona Asset Management's Bank One account and failed to produce nine checks from the requested time period.

14. Respondents' above-described conduct, coupled with the serious allegations of misappropriation of over $2,000,000, poses a serious and ongoing threat to the public health, safety and welfare.

**VIOLATIONS**

15. Respondents' conduct as alleged above constitutes a wilful violation of, or a wilful noncompliance with, any provision of this title, or any lawful rule, regulation or order of the director, in violation of A.R.S. § 20-316(A)(2).

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16. Respondents' conduct as alleged above constitutes a conduct of affairs under the licenses showing the licensees to be incompetent or a source of injury and loss to, or repeated complaint by, the public or any insurer, within the meaning of A.R.S. § 20-316(A)(7).

17. The license of a firm or corporation may be suspended, revoked or refused also for any of such causes as relate to any individual designated in the license to exercise its powers pursuant to A.R.S. § 20-316(B).

18. Grounds exist for the Director to suspend, revoke or refuse to renew Respondents' insurance licenses, impose a civil penalty upon Respondents and/or order restitution, pursuant to A.R.S. § 20-316(A) and 20-316(C).

WHEREFORE, if after hearing, the Director makes a finding of one or more of the above-described allegations, the Director may suspend, revoke or refuse to renew Respondents' insurance licenses, impose a civil penalty and order restitution, pursuant to A.R.S. § 20-316(A), 20-316(B), 20-316(C) and 20-456(B).

Pursuant to A.R.S. § 20-150, the Director of Insurance delegates the authority vested in the Director of Insurance of the State of Arizona, whether implied or expressed, to the Director of the Office of Administrative Hearings or his designee to preside over the hearing of this matter as the Administrative Law Judge, to make written recommendations to the Director of Insurance consisting of proposed findings of fact, proposed conclusions of law, and a proposed order. This delegation does not include delegation of the authority of the Director of Insurance to make the order on hearing or other final decision in this matter.

Pursuant to A.R.S. § 41-1092.01, your hearing will be conducted through the Office of Administrative Hearings, an independent agency. Enclosed is a copy of the procedures to be followed.

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DATED this 18th day of January, 2000.

CHARLES R. COHEN, Director
Arizona Department of Insurance

COPY of the foregoing mailed
this 18th day of January 2000 to:

Office of Administrative Hearings
1700 West Washington, Suite 602
Phoenix, AZ 85007

Michael J. De La Cruz
Assistant Attorney General
1275 West Washington Street
Phoenix, Arizona 85007
Attorney for the Department

Charles R. Cohen, Deputy Director
John Gagne, Assistant Director
Arnold Sniegowski, Investigations Supervisor
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Department of Insurance
2910 North 44th Street, Suite 210
Phoenix, Arizona 85018

Richard Ira Shear
Arizona Asset Partners 1, Inc.
9188 E. San Salvador Drive, Suite 203B
Scottsdale, Arizona 85258
Respondents

J. Michael Low
LOW & CHILDERS, P.C.
2999 North 44th Street, Suite 250
Phoenix, Arizona 85018

A courtesy copy of this Notice of Hearing has been mailed/delivered to the persons listed below. If you are listed below, you will receive no further notices or documents concerning this matter other than the director's final order. Information about the status of this matter, including whether the hearing date has been changed, may be obtained by contacting the Department of Insurance at (602) 912-8454 or the Assistant Attorney General identified above, at (602) 542-3702.

Amerus Life Insurance Company
Post Office Box 1555
Des Moines, IA 50306-1555

Ameritas Variable Life I.C.
Post Office Box 82550
Lincoln, NE 68501-2550

Equitable Life Ins. of Iowa
Post Office Box 1635
Des Moines, IA 50306-1635

Lincoln Benefit Life Co.
Post Office Box 80469
Lincoln, NE 68501-0469

Acacia Life Ins. Co.
7315 Wisconsin Avenue
Bethesda, MD 20814

First Penn Pacific Life I..C.
1801 South Meyers Road
Oakbrook, IL 60181-5214

Massachusetts Mutual Life I.C.
1295 State Street
Springfield, MA 01111

Manufacturers Life I.C. of America
Post Office Box 633
Buffalo, NY 14201-0633

Inter-State Assurance Company
Post Office Box 1907
Des Moines, IA 50306-1907

Mega Agency Insurance Services, Inc.
4100 Newport Place, #790
Newport Beach, CA 92660

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