STATE OF ARIZONA
FILED

JUL 23 2001

DEPT. OF INSURANCE
BY

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

In the Matter of: **MONTE J. BAUER,** Respondent.	**No. 01A-189 - INS** **CONSENT ORDER**

The State of Arizona Department of Insurance ("Department") has received evidence that Monte J. Bauer ("Respondent") violated 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. Monte J. Bauer ("Respondent") is and was at all material times licensed as a public adjuster in Arizona, Arizona license number 7371, which license expires October 31, 2002.

2. Respondent conducted business as a public adjuster under the name of Monte J. Bauer and Associates.

3. David Alan Berenter ("Berenter") is not currently and was not at any material time licensed as an adjuster. Berenter was previously licensed as an adjuster in Arizona and that license was revoked by Order of the Director on November 5, 1990 In The Matter of David Alan Berenter, Docket No. 7194.

4. From and about 1992 to present, Respondent contracted with Berenter. Berenter investigated and negotiated first party insurance claims on behalf of Respondent. In payment for his adjusting services, Respondent paid Berenter a percentage of the amount recovered on each first party insurance claim.

COUNT I

5. On or about February 10, 2001, Respondent entered into a representation agreement with Ruth and Fernado Maldonado (the Maldonados) to investigate and negotiate a settlement of a fire loss claim on their home. This agreement was signed by Respondent.

6. On or about February 13, 2001, Berenter notified the Maldonado's insurer, American National Property & Casualty Insurance Company (ANPAC), that Respondent had been retained to represent the Maldonados in the negotiation and settlement of their claim. The notification was signed by Berenter with the notation "For The Firm."

7. On or about February 14, 2001, Respondent and Berenter met with ANPAC's adjuster to walk-thru the damages to the Maldonados' home. Although Respondent was physically present at this initial walk-thru, Berenter assessed all of the damages. Respondent did not participate in the walk-thru.

8. Throughout February and March 2001, Berenter sent 10 separate pieces of correspondence with various demands to ANPAC to settle the Maldonados' claim. These documents were all signed by Berenter and included the notation "For The Firm." With the exception of the initial walk-thru, all oral discussions with ANPAC about the scope and the settlement of the Maldanados' claim were conducted by Berenter.

COUNT II

9. On or about February 22, 2001, Respondent entered into a representation agreement with Alfred and Ernestina Garcia (the Garcia's) to investigate and negotiate a settlement of a fire loss claim on their home.

10. On or about February 22, 2001, Berenter notified the Garcia's insurer, American Summit Insurance Company (American Summit), that Respondent had been retained to represent the Garcia's in

the negotiation and settlement of their claim. The notification was signed by Berenter with the notation "For The Firm."

11. In and around February and March 2001, Berenter sent six (6) pieces of correspondence with various demands to American Summit to negotiate the settlement of the Garcia's claim. These documents were all signed by Berenter and included the notation "For The Firm." All correspondnce and discussions with American Summit about the scope and the settlement of the Garcia's claim were conducted by Berenter.

COUNT III

12. In or around March 2001, Respondent entered into a representation agreement with Juanita Gamble (Gamble) to investigate and negotiate a settlement of a fire loss claim at her home.

13. On or about March 5, 2001, Berenter notified Gamble's insurer, Scottsdale Insurance Company (Scottsdale) that Respondent had been retained to represent Gamble in the negotiation and settlement of her claim. The notification was signed by Berenter with the notation "For The Firm."

14. On or about March 5, 2001, Respondent contacted Scottsdale's adjuster by phone and advised the Scottsdale adjuster to meet with Respondent's adjuster "Berenter" at the Gamble home to conduct a walk thru to assess the damages.

15. In and around March 2001, Berenter sent three (3) pieces of correspondence with various demands to Scottsdale to negotiate the settlement of Gamble's claim. These documents were all signed by Berenter and include the notation "For The Firm." All correspondence and discussions with Scottsdale about the scope and settlement of Gamble's claim were conducted by Berenter.

COUNT IV

16. On June 13, 2001 at 10:30 a.m., Department investigators served a subpoena on Respondent for documents including complete client files, accounting records, contracts and/or

agreements between Respondent and Berenter and checks made payable to Berenter. The subpoena was served on Respondent at his home/business office of record and demanded the production of records that Respondent was required pursuant to the provisions of A.R.S. §20-302 to maintain and to make available for inspection by the Director during regular business hours. Respondent initially refused to accept service of the subpoena. Upon accepting service, Respondent represented to the Department investigators that the records were unavailable.

CONCLUSIONS OF LAW

1. The Director has jurisdiction over this matter.

2. Respondent's conduct constitutes the failure to maintain the usual and customary records that pertain to transactions under the license and to keep these records open and available to the inspection of the director at any business time in violation of A.R.S. §20-302.

3. Respondent's conduct constitutes wilful violation of, or wilful noncompliance with, any provision of this title, or any lawful rule, regulation or order of the director, within the meaning of A.R.S. §20-316(A)(2).

4. Respondent's conduct constitutes conduct of affairs under the license showing the licensee 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).

5. Grounds exist for the Director to suspend, revoke, or refuse to renew Respondent's adjuster's license, impose a civil penalty upon him and/or order restitution pursuant to A.R.S. §§20-316(A) and 20-316(C).

ORDER

IT IS HEREBY ORDERED THAT Respondent's license is revoked effective immediately upon entry of this Order.

DATED AND EFFECTIVE this 20th day of July, 2001.

CHARLES R. COHEN
Director of Insurance

CONSENT TO ORDER

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 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 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.

7/18/01
Date

Monte J. Bauer
License Number 7371

COPIES of the foregoing mailed/delivered
this 23rd day of July, 2001, to:

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License file. Revoke.

Curvey Burton

Curvey Walters Burton