

JUN 16 1992

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

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By                     

In the Matter of	)	Docket No. 7687
	)	
HENRY DE JONGE,	)	ORDER
	)	
Respondent.	)	
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On June 2, 1992, a hearing was held at the Arizona Department of Insurance in the above-referenced matter. The Respondent was present in propria persona. The Arizona Department of Insurance was represented by Attorney General Grant Woods and Assistant Attorney General Kathryn Leonard.

Based upon the testimony and other evidence presented at the hearing, we make the following findings of fact and conclusions of law and issue the following order.

FINDINGS OF FACT

1. Notice of this hearing was mailed to Respondent at his address of last record.

2. Respondent is licensed as a life and disability agent, property and casualty broker and property and casualty insurance agent in this state (license no. 29670).

3. While acting in his capacity as an agent for First National Life Insurance Company ("First National"), Respondent sold Arizona consumers Medicare supplement insurance policies issued by First National. The consumers involved in the transactions at issue ranged in age from 69 to 90.

4. In addition to selling Medicare supplement policies, Respondent sold these consumers Pre-Existing Reduction Riders ("PERRs") also issued by First National for a premium

1 equal to seven percent of the base premium for the Medicare  
2 supplement policy. The PERR reduced the waiting period for  
3 pre-existing conditions from six months to 31 or 60 days,  
4 depending on the age of the insured.

5 5. As part of his sales presentation, Respondent  
6 advised these consumers that if they purchased the First  
7 National Medicare supplement policy and the PERR from him, he  
8 would refund to the consumers the amount of the premium paid for  
9 the PERR. At the time of the sale, Respondent collected from  
10 these consumers the full amount of the premium, including the  
11 additional premium for the PERR, and remitted these premiums to  
12 First National. Shortly after collecting these premiums,  
13 Respondent issued checks from his agency to the consumers in  
14 amounts equal to the amounts paid for the PERR.

15 6. Respondent testified that he did not offer these  
16 refunds as inducements. However, Jerry Ditzel a former  
17 associate of Respondent who accompanied Respondent on sales  
18 calls, testified that Respondent did offer these refunds as  
19 incentives to purchase policies from him.

20 Ditzel testified that following a sales call,  
21 Respondent told Ditzel that Respondent could refund the PERR  
22 premium because of the commission Respondent would make on the  
23 sale of the Medicare supplement policies. Although Respondent  
24 testified he did not offer these refunds as inducements, he  
25 failed to present any evidence of any valid reason to make such  
26 refunds.

27 7. We find that the Department has shown by  
28 substantial evidence that Respondent knowingly offered these

1 refunds to consumers as inducements to purchase insurance from  
2 him. Respondent represented that if a consumer purchased a  
3 Medicare supplement policy from Respondent, the consumer would  
4 receive a PERR at no additional cost.

5 8. The following are the consumers who purchased  
6 Medicare supplement policies and PERRs from Respondent, the  
7 dates and policy numbers, the premium each paid for their  
8 Medicare supplement policy, the amount of premium paid for each  
9 PERR and the amount of rebate received by each senior citizen  
10 from Respondent:

<u>Name</u>	<u>Date &amp; Policy Number</u>	<u>Premium</u>	<u>Premium for PERR and/or Policy Fee</u>	<u>Rebate Received From DeJonge</u>
Mayschiel Le Sieur	6/27/90 75452	\$ 249.00	\$ 65.73	
Stanley Le Sieur	6/27/90 75451	\$ 307.00	\$ 81.13	\$ 127.57
Alice Koprek	4/30/90 73512	\$ 107.00	\$ 97.71	\$ 97.71
Marie J. Presti	8/23/90 76471	\$ 365.00	\$ 96.53	\$ 96.53
William Kloss	8/23/90 76472	\$ 70.00	\$ 58.03	\$ 58.03
Rosalynn Kloss	8/23/90 76473	\$ 70.00	\$ 58.03	\$ 58.03
Sue M. Ralph	5/23/90 74367	\$1,269.00	\$ 98.83	\$ 88.10
Roland L. Ralph	5/23/90 74366	\$ 939.00	\$ 75.73	\$ 65.73
Irene Wiser	5/4/90 73725	\$1,153.00	\$ 90.71	\$ 80.71

23 9. Respondent continued to make such refunds after  
24 being advised by First National that this practice was  
25 prohibited. Respondent advised First National that he was aware  
26 of the prohibition on rebates contained in A.R.S. §20-449.

27 10. At the hearing, Respondent offered three  
28 explanations for these transactions (1) he could not remember

1 making these refunds, (2) he signed blank checks that were later  
2 filled in by his clerical staff and he was unaware of the  
3 refunds and (3) the refunds were not rebates. We find  
4 Respondent's testimony to be inconsistent and not credible.

5 CONCLUSIONS OF LAW

6 1. Notice of hearing in this matter was proper  
7 pursuant to A.R.S. §§20-163 and 41-1061.

8 2. The Director has jurisdiction in this matter  
9 pursuant to A.R.S. §20-142.

10 3. On at least ten occasions, Respondent knowingly  
11 paid directly, as inducements to purchase Medicare supplement  
12 policies, rebates of premiums payable on the Pre-Existing  
13 Reduction Rider to the Medicare supplement policy in violation  
14 of A.R.S. §20-449.

15 4. Respondent's conduct constitutes wilful violation  
16 of, or wilful noncompliance with any provision of Title 20,  
17 A.R.S. within the meaning of A.R.S. §20-316(A)(2).

18 5. Respondent's conduct constitutes a conduct of  
19 affairs under the license showing the licensee to be incompetent  
20 or a source of injury and loss to, or repeated complaint by, the  
21 public or any insurer within the meaning of A.R.S. §20-316(A)(7).

22 IT IS HEREBY ORDERED THAT

23 1. Any and all of Respondent's insurance licenses  
24 are revoked effective immediately.

25 2. Respondent shall pay a civil penalty to the  
26 Arizona Department of Insurance in the amount of \$5,000 on or  
27 before August 1, 1992.

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