

SEP 8 1995

DEPARTMENT OF INSURANCE
By 

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

6523c:CPA95-023

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

In the Matter of:)	
)	No. 95-117
WESTSIDE INSURANCE AGENCY, INC.,)	
and DAVID LEWIS McFADDEN,)	CONSENT ORDER
)	
Respondents.)	

A Order Summarily Suspending Licenses and Notice of Opportunity for Hearing was issued by the Director ("Director") of the Department on July 27, 1995, wherein the Department made certain allegations of violations of A.R.S. Title 20 committed by Respondents. Respondents received a copy of the Order and requested a hearing. Respondents have been advised of their rights to a hearing in this matter, which they waive.

Respondents admit the following Findings of Fact are true and consent to the entry of the following Conclusions of Law and Order.

FINDINGS OF FACT

1. Westside Insurance Agency, Inc. ("Westside") is an Arizona Corporation, currently licensed as a property and casualty insurance broker by the State of Arizona (License No. 27279). Westside's license expires November 30, 1996.

2. David Lewis McFadden ("McFadden") is currently licensed as a property and casualty insurance agent and broker and life and disability agent by the State of Arizona (License No. 274465). McFadden is the owner and operator of Westside.

3

1 McFadden's licenses expire August 31, 1995.

2 COUNT I

3 3. On or about May 10, 1994, Westside issued Flynn
4 Cable a Certificate of Insurance. Westside never required an
5 application nor accepted premium from Flynn Cable for this
6 Certificate. The Certificate of Insurance indicates that Flynn
7 Cable had been issued a Binder for commercial general liability
8 insurance coverage through Colorado Casualty Insurance Company
9 ("Colorado Casualty") and commercial automobile insurance
10 coverage through Century-National Insurance Company
11 ("Century-National").

12 4. Flynn Cable included the Certificate of Insurance
13 in a bid package submitted to CableWorks, Inc. ("CableWorks"),
14 a general contractor, located in Baton Rouge, Louisiana.
15 CableWorks accepted Flynn Cable's bid.

16 5. On or about May 24, 1994, an employee of Flynn
17 Cable working on a job site in Baton Rouge, Louisiana, covered
18 by the bid, caused damage to the home of Ruth Comingore
19 ("Comingore"). Comingore submitted a claim to CableWorks for
20 damages and costs incurred totalling approximately \$5,000.00.

21 6. CableWorks attempted to contact Flynn Cable to
22 have the claim handled through Colorado Casualty. However,
23 Flynn Cable left the state of Louisiana and failed to return
24 telephone calls made to them by CableWorks.

25 7. On or about September 12, 1994, CableWorks
26 contacted Colorado Casualty and was notified that Flynn Cable

1 was not insured by Colorado Casualty. Westside never secured
2 the insurance coverage for Flynn Cable that was represented by
3 the Colorado Casualty binder Westside provided to Flynn Cable.

4 8. CableWorks subsequently contacted McFadden
5 regarding the Certificate of Insurance issued by Westside to
6 Flynn Cable. McFadden assured CableWorks that he would handle
7 the claim.

8 9. On or about November 9, 1994, Flynn Cable issued
9 their check number 2371, in the amount of \$2,900.00 to Westside
10 to go toward payment of the CableWorks claim.

11 10. On or about December 1, 1994, Westside issued
12 their check No. 21043 in the amount of \$2,900.00 to CableWorks
13 for payment of their claim.

14 11. On or about March 9, 1995, Westside issued their
15 check number 6073 in the amount of \$1,500.00 as additional
16 payment to CableWorks to settle their claim.

17 12. Subsequently, Westside issued their check in the
18 amount of \$4,400.00 to replace the other two checks forwarded
19 to CableWorks. This check effectuated settlement of the claim.

20 13. In December, 1994, CableWorks received a claim
21 for damages from Bellsouth Telecommunications ("Bellsouth") in
22 the amount of \$5,025.82. The claim was for damages caused by
23 Flynn Cable to Bellsouth's telecommunication lines during
24 additional work in Baton Rouge, Louisiana, covered by the
25 Certificate of Insurance Westside provided Flynn Cable.

26 14. Subsequently, CableWorks notified Flynn Cable,

1 McFadden and Westside of the additional claim.

2 15. Westside and McFadden have not accepted
3 responsibility for the Bellsouth claim. To date, the claim for
4 damages made by Bellsouth Telecommunications on CableWorks has
5 not been satisfied and is in dispute.

6 Count II

7 16. On or about December 20, 1994, McFadden received
8 a \$45.00 cash down payment from Cody Dorman ("Dorman") for an
9 automobile insurance policy through Guaranty National.

10 17. On that same date, McFadden had Dorman sign an
11 application and a roadside service contract. McFadden
12 represented that the roadside service contract was part of the
13 insurance policy offered through Guaranty National.

14 18. On or about January 3, 1995, Westside received an
15 additional \$53.00 from Dorman.

16 19. On or about January 9, 1995, Dorman notified
17 Guaranty National that his vehicle had broken down and
18 requested that his insurance policy be cancelled. Guaranty
19 National told Dorman that they had received a \$63.00 down
20 payment and that he would receive a refund of \$23.00.

21 20. On that same date, Dorman instructed Westside to
22 cancel his policy and questioned Westside as to why Guaranty
23 National only received \$63.00 when he had paid Westside
24 \$98.00. Westside told Dorman that they had charged him a
25 \$35.00 broker fee.

26 21. On or about January 20, 1995, Dorman filed a

1 complaint against Westside with the Arizona Department of
2 Insurance.

3 22. Subsequently, the Department contacted Westside
4 regarding Dorman's complaint.

5 23. On or about February 22, 1995, Westside notified
6 the Department that Dorman had not been charged a \$35.00 broker
7 fee, but instead was charged \$35.00 for a six month road
8 service package through Roadside Motor Club.

9 24. McFadden and Westside failed to disclose to
10 Dorman that \$35.00 of the \$98.00 premium paid was to be
11 utilized for the roadside service contract.

12 25. Westside failed to forward Dorman's application
13 and/or funds to the Roadside Motor Club. Consequently,
14 Roadside Motor Club never received an application and/or monies
15 from Westside on behalf of Dorman.

16 26. To Date, McFadden and Westside have not refunded
17 Dorman's \$35.00.

18 Count III

19 27. On or about August 20, 1994, Westside received an
20 application and a \$58.00 down payment from Salvador Galindo
21 Villanueva ("Mr. Villanueva") for a one month automobile
22 insurance policy through Safeway Insurance Company
23 ("Safeway").

24 28. On or about August 20, 1994, Westside also issued
25 Mr. Villanueva an insurance identification card ("ADOT card")
26 listing Safeway as insurer.

1 29. On that same date, Westside advised Mr. Villanueva
2 that they needed a copy of the driver's license for his wife,
3 Sofia Villanueva and had him sign a "Missing Information Form".

4 30. The Missing Information Form failed to notify
5 Mr. Villanueva of the number of days within which he was allowed
6 to return the form to Westside and what action would be taken if
7 he failed to return the form.

8 31. On or about August 23, 1994, Westside, acting
9 without authority from Safeway, issued a Notice of Cancellation
10 containing an invalid policy number to Mr. Villanueva for failing
11 to provide the information requested on his wife. The Notice of
12 Cancellation failed to provide Mr. Villanueva the statutorily
13 required notice of cancellation.

14 32. Pursuant to Safeway's underwriting guidelines and
15 producer agreement with Westside, Westside is not authorized to
16 bind coverage, accept premium or issue ADOT cards until an
17 application is completed in its entirety.

18 33. On August 27, 1994, four days after Westside mailed
19 Mr. Villanueva the cancellation notice, Westside mailed Mr.
20 Villanueva a renewal premium statement containing the same
21 invalid policy number as was contained on the cancellation notice
22 Mr. Villanueva received dated August 23, 1994. Contained within
23 that statement was a bill for \$58.00 for coverage due
24 September 20, 1994.

25 34. On or about September 26, 1994, Westside accepted
26 Mr. Villanueva's check for \$56.00 for an additional month's

1 premium and issued Mr. Villanueva an ADOT card, listing Safeway
2 as the insurer with effective coverage dates September 26, 1994
3 thorough October 26, 1994.

4 35. On or about October 3, 1994, Westside received the
5 \$76.00 in premium which had been quoted to Mr. Villanueva to pay
6 for coverage to add Mr. Villanueva's second car, a 1982 Ford
7 Granada on to his existing policy until the end of the monthly
8 policy period, October 26, 1994. Westside provided Mr.
9 Villanueva with an ADOT card listing Safeway as the insurer with
10 effective dates of coverage of October 6, 1994 through
11 October 26, 1994.

12 36. Westside never forwarded a complete application or
13 any premium on behalf of Mr. Villanueva on either vehicle to
14 Safeway although Westside continued to accept Mr. Villanueva's
15 payments.

16 37. On October 15, 1994, while near Payson,
17 Mr. Villanueva was involved in an automobile accident at 11:40
18 a.m.

19 38. Mr. Villanueva contacted Westside when he returned
20 to Phoenix to inform Westside of the accident.

21 39. After being informed of the accident, and because
22 Mr. Villanueva had no coverage through Safeway, Westside created
23 an application for Mr. Villanueva showing the application date as
24 October 15, 1994 and United Southern Assurance Company ("United
25 Southern") as the insurer. The application purports to have been
26 completed at 8:15 a.m. The application also contains a signature

1 purporting to be of Mrs. Villanueva, when in fact, the signature
2 is not hers and the spelling of her name is incorrect.

3 40. On or about October 20, 1994, Four Corners General
4 Agency ("Four Corners"), the managing general agent for United
5 Southern, received an application dated October 15, 1994 and
6 premium in the amount of \$73.00 to bind a policy for
7 Mr. Villanueva for six months.

8 41. On or about October 19, 1994, Westside submitted a
9 finance contract to Dwight Financial for Mr. Villanueva, showing
10 a downpayment of \$73.00 and four monthly installments due of
11 \$59.70 on the United Southern policy. Neither Mr. nor Mrs.
12 Villanueva knew a policy had been financed nor did either tender
13 this downpayment to Westside.

14 42. Westside created both the application and finance
15 contracts utilizing an address where the Mr. Villanueva's no
16 longer lived, consequently, the payment book from Dwight
17 Financial never reached Mr. Villanueva. He had no notice that
18 policies had been financed in his name.

19 43. On or about October 22, 1994, Dwight Financial
20 received \$53.00 to add the Granada to the finance contract.

21 44. On or about January 2, 1995, Dwight Financial
22 received \$58.00 from Westside as a payment on Mr. Villanueva's
23 finance contract.

24 45. On or about February 3, 1995, Dwight cancelled
25 Mr. Villanueva's policy for non-payment of premium.

26 46. On or about May 12, 1995, Westside completed an

1 Safeway application for Mr. Villanueva for one months coverage
2 on the 1982 Granada. Westside accepted premium in the amount
3 of \$100.00. The policy application to United Southern shows
4 the premium required to institute the policy was \$65.00.

5 47. Westside claims that it applied the remaining
6 \$35.00 to a one year roadside service contract (the "motor
7 club"). Mr. Villanueva never agreed to purchase such a
8 contract but believed, based on Westside's representations,
9 that the motor club was included in the policy.

10 48. As a standard practice, Westside requires
11 insureds to complete a "Confirmation of Coverage" (the
12 "Confirmation") form. This form contains several provisions
13 that insureds can either accept or reject in obtaining coverage.

14 49. Item 12 of the Confirmation includes the motor
15 club which the insured has no option to reject.

16 50. Westside's practice requires its employees to use
17 a "Sales Presentation Script" that provides in part that the
18 policy package includes the motor club. Sales persons are not
19 instructed to inform insureds that the motor club costs extra
20 or that the insured could reject the motor club.

21 51. To date, Mr. Villanueva has not received the
22 insurance he paid for, his 1994 accident has not been covered
23 because United Southern rejected the application as fraudulent
24 and he never received a refund of the \$446.00 in premium he
25 paid to Westside.

26

1 created finance contracts and financed both policies, sending
2 an initial downpayment of \$79.00 to United Southern and \$85.00
3 to U.S.A.

4 59. At that same time, Westside gave Velasquez an
5 ADOT card showing the insurer to be AZSTAR Casualty Company
6 ("AZSTAR"). AZSTAR had been taken into receivership by the
7 Department of Insurance November 19, 1992 and was not
8 authorized to accept new business in Arizona after that date.

9 60. On or about April 28, 1995, Four Corners, on
10 behalf of United Southern, issued Velasquez a cancellation
11 notice for failure to respond to an underwriting inquiry.

12 61. On or about May 21, 1995, Dwight issued Velasquez
13 a cancellation notice for non-payment of premium. The payment
14 had been due May 5, 1994.

15 62. Velasquez speaks Spanish. Westside's telephone
16 information recording is in both Spanish and English. When
17 Velasquez attempted to contact Westside regarding the
18 cancellation notices Westside employees refused to speak with
19 Velasquez claiming they could not understand him.

20 63. To date, Velasquez has not received the insurance
21 he paid for, nor has he received a refund from Westside.

22 Count VI

23 64. On or about May 15, 1995 Westside received a
24 \$200.00 check through Chapman Chevrolet from Joanne Garcia for
25 insurance coverage through United Southern on the vehicle Ms.
26 Garcia purchased from Chapman May 15, 1995.

1 a wilful violation of, or wilful noncompliance with, any
2 provision of A.R.S. Title 20 or any lawful rule, regulation or
3 order of the Director, within the meaning of A.R.S.
4 § 20-316(A)(2).

5 5. Respondents' conduct described above constitutes
6 misappropriation, conversion or illegal withholding of monies
7 belonging to policyholders, insurers, beneficiaries or others,
8 in violation of A.R.S. § 20-316(A)(4).

9 6. Respondents' conduct described above constitutes
10 a conduct of affairs under his license showing him to be
11 incompetent or a source of injury and loss to the public or any
12 insurer, in violation of A.R.S. § 20-316(A)(7).

13 7. The conduct described above constitutes
14 misrepresentation in the sale of insurance within the meaning
15 of A.R.S. § 20-443.

16 8. By issuing ADOT cards containing information
17 which was untrue, deceptive or misleading, Respondent violated
18 A.R.S. § 20-444(A).

19 9. Respondent diverted or attempted or conspired to
20 divert the monies of an insurer, reinsurer, entity licensed to
21 transact insurance business in this state or other person in
22 connection with the transaction of insurance or reinsurance, in
23 violation of A.R.S. § 20-463(A)(4)(a).

24
25
26 . . .

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

ORDER

NOW, THEREFORE, IT IS ORDERED:

1. Respondents shall cease and desist violating the provision of A.R.S. § § 20-443 and 20-444 by representing to insureds that the insurance coverage they purchased was valid coverage and by issuing certificates of insurance that contained statements that are untrue or deceptive.

2. All insurance licenses held by Respondents shall be revoked upon the entry of this Consent Order.

3. Respondents shall be jointly and severally liable for restitution in the amounts and to the individuals/companies set forth below. Respondents shall provide acceptable proof of payment of the restitution to the Department within 60 days of entry of this consent order.

a.	CableWorks/Bellsouth	\$9,425.82
b.	Cody Dorman	35.00
c.	Salvador Villanueva	446.00
d.	Richard Smith	95.00
e.	Margarito Velasquez	625.00
f.	Joanne Garcia	200.00
	TOTAL	\$10,826.82

4. Respondents shall be responsible for the claims filed by Salvador Villanueva and Joanne Garcia for accidents that occurred while they were uninsured due to Respondents' failure to obtain insurance coverage for them as set forth in counts III and VI of the Findings of Fact contained herein.

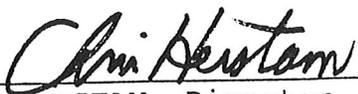
5. Respondents shall deliver their original licenses to the licensing section of the Department within 5 days of entry

1 of this order pursuant to A.R.S. § 20-317(C).

2 6. The hearing set for September 20, 1995 at 9:00 a.m.
3 is vacated by entry of this order.

4 DATED this 8th day of September, 1995.

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26


CHRIS HERSTAM, Director
Arizona Department of Insurance

CONSENT TO ORDER

1. The undersigned acknowledges that he has read the foregoing Findings of Fact, Conclusions of Law and Order and is aware of the right to an administrative hearing in this matter and waives same, on his own behalf and on behalf of Westside Insurance Agency, as owner and operator.

2. The Undersigned admits the jurisdiction of the Department and admits the foregoing Findings of Fact and consents to the foregoing Conclusions of Law and Order, both on his own behalf and on behalf of Westside Insurance Agency.

3. The undersigned states that no promises were made to Respondents to induce them to enter into this Consent Order and declares that Respondents have entered into this Consent Order voluntarily.

4. The undersigned acknowledges that acceptance of this Consent Order is for the purpose of settling this litigation as against David Lewis McFadden and Westside Insurance Agency, Inc., and does not preclude the Department, or any other agency or officer of this State, or subdivision thereof, from

1 instituting other civil or criminal proceedings as may be
2 appropriate now or in the future.

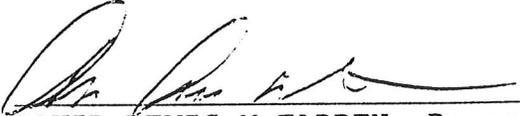
3 5. The undersigned, on behalf of himself and Westside
4 Insurance Agency, Inc. waives all rights to challenge these
5 Findings of Fact, Conclusions of Law and Order on appeal or
6 otherwise, and agrees to be bound by the foregoing Order.

7 WESTSIDE INSURANCE AGENCY, INC.

8
9 Date: Sept 6, 1995

By 
David Lewis McFadden
President

10
11
12 Date: Sept 6, 1995


DAVID LEWIS McFADDEN, Respondent

13
14
15 COPY of the foregoing mailed this
16 8th day of September, 1995, to:

17 Kathryn Leonard
18 Assistant Attorney General
1275 West Washington, Room 259
Phoenix, Arizona 85007

19 Charles R. Cohen, Deputy Director
20 Gregory Y. Harris, Executive Assistant Director
21 John Gagne, Manager, Investigations
Arnold Sniegowski, Investigator
22 Donna Futrell, Investigator
Maureen Catalioto, Supervisor
23 Department of Insurance
2910 North 44th Street, Suite 210
Phoenix, Arizona 85018

24 Douglas McVay
25 Attorney at Law
3550 N. Central, Suite 1701
Phoenix, AZ 85012-2114
26 Attorney for Respondents

1 Mark Flynn, Flynn Cable
2 1023 E. Firbrook
Mesa, AZ 85203

3 Fred L. Wilkes, Project Manager
4 CableWorks, Inc.
5 P.O. Box 83978
Baton Rouge, LA 70884-3978

6 Cody Dorman
7 4903 W. Thomas #148
Phoenix, AZ 85031

8 Richard Smith
9 6564 S. Van Buren
Tucson, AZ 85706

10 Leon Eguia, Branch Manager
11 Colorado Casualty Insurance Company
4141 N. Scottsdale Road, Suite 310
12 Scottsdale, AZ 85251

13 Joyce McNealy
14 Commercial Underwriting Supervisor
Century-National Insurance Company
15 P.O. Box 3999
North Hollywood, CA 91609-9990

16 American Equity
8370 E. Via De Ventura, Bldg. K
17 Scottsdale, AZ 85258

18 Clarendon National Insurance Co.
19 P.O. Box 5619
Diamond Bar, CA 91765-7619

20 Century-National Insurance Co.
21 P.O. Box 3999
N. Hollywood, CA 91609

22 Empire Fire & Marine
1624 Douglas Street
23 Omaha, NE 68102

24 Farmers Insurance Company
18444 N. 25th Avenue
25 Phoenix, AZ 85023

26

1 Franklin Life & Disability
Franklin Square
2 Springfield, IL 62713

3 Guaranty National
P.O. Box 3329
4 Englewood, CO 80155

5 Massachusetts General Life Insurance Co.
7887 E. Bellview Avenue
6 Englewood, CO 80111

7 Safeway Insurance Co.
500 S. Racine Avenue
8 Chicago, IL 60685

9 Sutter Insurance Company
P.O. Box 6000
10 Larkspur, CA 94977-6000

11 United Pacific
4 Penn Center Plaza
12 Philadelphia, PA 19103

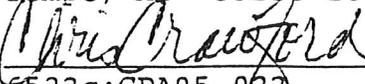
13 United Southern Assurance Co.
P.O. Box 2648
14 Melbourne, FL 32902-2648

15 Viking Insurance Company
P.O. Box 5365
16 Madison, WI 53705-0365

17 Cathy Geist
Technical Associate
18 Agency Licensing
Viking Insurance Company
19 P.O. Box 1080
Freeport, Illinois 61032

20 Lisa McAlduff
21 Underwriting Manager
Safeway Insurance Company
22 P.O. Box 22078
Tempe, AZ 85258-2078

23
24 Greg Bovyn
Claims Manger
Safeway Insurance Company
25 P.O. Box 22078
Tempe, AZ 85258-2078

26 
6523c:CPA95-023