

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

OCT 8 1996

DEPT. OF INSURANCE
BY RHL

In the Matter of:)	Docket No. 96A-106-INS
)	
MERLIND J. PERUMEAN, JR.,)	ORDER
)	
Applicant.)	
)	
)	

On October 4, 1996, the Office of Administrative Hearings, through Administrative Law Judge Robert I. Worth submitted "Recommended Decision of Administrative Law Judge", a copy of which is attached and incorporated by this reference. The Director of the Arizona Department of Insurance has reviewed the recommendation, and enters the following order:

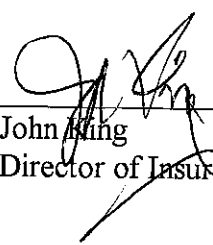
1. The recommended findings of fact and conclusions of law are adopted.
2. The application for a resident life and disability agent license submitted by Merlind J. Perumean, Jr., is denied.

NOTIFICATION OF RIGHTS

The aggrieved party may request a rehearing with respect to this Order by filing a written petition with the Office of Administrative Hearings within 30 days of the date of this Order, setting forth the basis for such relief pursuant to A.A.C. R20-6-114(B).

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2 The final decision of the Director may be appealed to the Superior Court of Maricopa
3 County for judicial review pursuant to A.R.S. § 20-166.

4 EFFECTIVE this 7th day of October, 1996.

5
6 
7 John King
8 Director of Insurance


9 A copy of the foregoing mailed
10 this 8th day of October, 1996

11 Charles R. Cohen, Deputy Director
12 Catherine O'Neil, Assistant Director
13 John Gagne, Assistant Director
14 Scott Greenberg, Business Administrator
15 Maureen Catalioto, Supervisor
16 Department of Insurance
17 2910 North 44th Street, Suite 210
18 Phoenix, AZ 85018

19 Office of Administrative Hearings
20 1700 West Washington, Suite 602
21 Phoenix, AZ 85007

22 Kathryn Leonard
23 Assistant Attorney General
1275 West Washington, Room 259
Phoenix, AZ 85007

Merlind J. Perumean
843 S. Longmore, #2157
Mesa, AZ 85202


Kathy Lindus

1
2 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**
3

4 **In the Matter of:**

No. 96A-106-INS

5 **MERLIND J. PERUMEAN, JR.**

RECOMMENDED DECISION
OF ADMINISTRATIVE
LAW JUDGE

6 **Applicant.**
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11 The above-entitled matter came on for hearing on September 26, 1996 pursuant
12 to advance notice duly sent to all parties. The Arizona Department of Insurance (herein
13 called the "Department") was represented by Assistant Attorney General, Kathryn
14 Leonard, and the named Applicant was represented by his attorney, Randy J. Hurwitz.
15 Evidence and testimony were presented, and based upon the entire record, the
16 following Findings of Fact, Conclusions of Law and Recommended Order have been
17 prepared and are hereby submitted by the undersigned Administrative Law Judge for
18 review, consideration, approval and adoption by the Director of the Department (herein
19 called the "Director").
20

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22 **FINDINGS OF FACT**
23

24 1. Merlind J. Perumean, Jr. (herein called "Perumean") filed an
25 application for a resident individual life and disability agent license with the
26 Department. His answer to a specific question on the application disclosed
27 that he previously had a license from another jurisdiction suspended or
28 revoked.
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2. After Mr. Perumean had provided the Department with copies of most all pertinent documents relating to a certain sequence of incidents in the State of California, the Department denied the pending application, following which the Applicant had timely requested the convening of the instant hearing seeking to overturn the prior denial action.

3. Mr. Perumean had been engaged in the active practice of law, having been duly admitted to the Bar of the State of California in December, 1976. A series of client complaints filed against the Applicant resulted in the institution of formal disciplinary proceedings before the State Bar Court.

4. The specific instances of unprofessional conduct upon which the aforesaid disciplinary action was based occurred between 1979 and 1982, and they encompassed a variety of circumstances reflecting unfavorably upon the manner in which Mr. Perumean had discharged or failed to discharge his legal representation duties owed to several of his clients.

5. The first of three separate but related proceedings was concluded after Mr. Perumean had expressly stipulated to certain findings as to some but not all of the violations of professional conduct which were charged at that time. The admitted wrongful conduct consisted, in large part, of not performing legal services for which he had been retained and his failure to return previously paid but unearned legal fees. Those actions were further stipulated to constitute willful violations of applicable Rules of Professional Conduct and of specified sections of the Business and Professions Code.

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6. The originally proposed penalties under the initial stipulation were subsequently increased by amendment following a determination that the seriousness of the Applicant's improper actions warranted heavier penalties and also that applicable law mandated a shorter time frame for his compliance with other specified conditions. The entry by Mr. Perumean into an arrangement pursuant to which an agreed extent of disciplinary sanctions would be imposed based upon a stipulated set of facts effectively cut short the formal proceedings and eliminated the potential probability of more adverse findings and more stringent penalties. Any violation of obligations assumed under such a stipulated arrangement should, therefore, be accorded substantial weight in any future evaluation of fitness or entitlement to secure a professional license privilege in another jurisdiction.

7. An amended Order was entered by the Bar Court, ultimately confirmed by Order of the State's Supreme Court on May 23, 1986, which became the effective date for the commencement of the stated sanctions. Such Order suspended Mr. Perumean from the practice of law for twelve months, but also provided that after serving three months of such suspension, he was to be placed on probation for a period of three years. Some of the specific conditions of the probation entailed the following: (i) the re-taking of the professional responsibility examination within the first twelve months; (ii) the prompt formulation and submission of a comprehensive plan for the management of his law office; and (iii) the periodic reporting to an assigned probation monitor. In addition, Mr. Perumean belatedly, and somewhat begrudgingly, had made monetary restitution to several of the parties who had filed formal complaints with the California Bar, as also required under the Order.

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8. Numerous and varied explanations for the underlying charged misconduct were advanced by the Applicant, most all of which tended to shift the blame to the complaining client and away from his own acts or omissions as their legal representative. A significant degree of suspicion must necessarily linger as to the sincerity of Mr. Perumean's expressed admission that he had behaved in a wrongful manner as an individual or as a lawyer, and it remains somewhat questionable as to whether his attitude is consistent with that of a person having genuine remorse or sympathy for those of his former clients who were victims of his unprofessional conduct.

9. After a few initial contacts by Mr. Perumean with his probation monitor (not confirmed and, in fact, disputed by such individual in subsequently filed pleadings), the Applicant decided to cease practicing law on the date that the California Supreme Court's Order became effective and he elected to disregard the terms of his probation, including not re-taking the professional responsibility examination, not filing or updating an office plan and not reporting to the probation monitor. However, his tendered written letter of resignation from Bar membership allegedly sent in August 1986 was not timely received or recorded by the Bar's offices nor has Applicant retained a copy thereof. In any event, further formal proceedings seeking probation revocation were initiated, of which Mr. Perumean remained unaware, and that portion of the originally imposed suspension duration which had been part of the overall probation period was converted to active suspension from practice by a decision entered on March 4, 1987.

1 10. Shortly before the inception and conclusion of the probation
2 revocation proceedings, a separate action had been commenced by the
3 State Bar pending the outcome of such proceedings, to immediately
4 cause the involuntary enrollment of Mr. Perumean as an inactive member
5 of the Bar, which would be the substantial equivalent of summarily
6 suspending his license to actively practice law in California. A decision
7 was filed which effectuated such involuntary enrollment into inactive
8 status effective on January 22, 1987. Mr. Perumean, claiming his non-
9 receipt of notice, did not participate in either of these further proceedings,
10 nor did he seek any review or modification of the decisions that were
11 entered, and therefore, he may not properly collaterally attack the prior
12 findings or results in this administrative proceeding challenging the denial
13 of his application for a license in another State. It may also be noted that
14 one of the terms of his probation, through the stipulation and Order, as
15 amended, imposed a specific duty upon the Applicant to verify the
16 continued accuracy of both his business and residence addresses on file
17 with the State Bar and to promptly notify them in writing of any address
18 changes.

19
20 11. The above-described further proceedings included seventeen
21 additional counts of charged misconduct on the part of Mr. Perumean
22 involving eighteen former clients and covering events through late-1985
23 consisting, in part, of abandonment, accepting funds but failing to perform
24 the services for which retained and/or to reasonably communicate with his
25 clients as well as failures to account or to release files. Moreover, there
26 were instances involving Mr. Perumean's making of misrepresentations to
27 various individuals to whom professional duties were owed and his
28 issuance of at least five checks which were tendered in purported
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1 payment of necessary court filing fees that were subsequently dishonored
2 by the bank.

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4 12. The evidence of record tended to establish that Mr. Perumean's past
5 improprieties did not consist of a single or a very few isolated instances or
6 events, but rather were indicative of a repeated pattern of willful
7 misconduct which, when considered in its totality, is found and determined
8 to constitute a record of dishonesty. Any previously tendered resignation
9 from Bar membership after commission of such wrongdoing and after a
10 decision is reached to terminate his law practice does not serve to
11 eradicate the adverse impact of the prior disciplinary proceedings upon
12 the good character requisite for licensure which was being evaluated by
13 the Department with respect to his application for the insurance license
14 now sought in Arizona.

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16 13. With respect to the Department's overall review of the instant
17 application filed by Mr. Perumean, it was apparent that strong
18 consideration was given to the fact that Applicant had been operating in
19 capacities based upon trust and professionalism, often involving a
20 fiduciary relationship. A significantly long-lasting adverse effect may
21 properly be given in this case based upon the quantity, nature and gravity
22 of the prior wrongful acts or omissions attributable to Applicant, some of
23 which were established by express stipulation with other instances being
24 deemed admitted by his default in appearance at the subsequent actions
25 involving the probation revocation and the involuntary conversion to
26 inactive membership status and his ensuing failure to appeal or otherwise
27 seek to modify the results of such actions. These factors serve to
28 counter-balance the elapsed period of time since the commission of these
29 improprieties most all of which are indicative of a disregard by Mr.
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1
2 Perumean of the entitlements of his clients as well as of his own duties as
3 a practicing attorney and counselor at law.

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5 14. Mr. Perumean urged, by way of mitigating circumstances, that during
6 the overall time span during which client complaints were generated, he
7 was consistently under extreme mental and emotional stress as a result of
8 his father's business and health problems (his father subsequently died on
9 April 10, 1985) and also his marital difficulties that eventually led to a
10 separation and divorce. Applicant was shown to have always complied
11 with his child support obligations with respect to the two children of his
12 marriage.

13
14 15. For over eighteen years, Mr. Perumean has held and presently still
15 holds a real estate license in California which has been renewed several
16 times by that State even after the actions before the State Bar Court
17 relating to his law practice problems were concluded and disclosed. His
18 operations under such real estate license were admittedly not complaint-
19 free, but Mr. Perumean asserted that the few complaints filed were based
20 upon allegedly improper actions of individual agents in Applicant's employ
21 for which he had supervisory or ownership responsibilities. That license
22 remains in good standing at the present time.

23
24 16. In addition to his California real estate license, Mr. Perumean fairly
25 recently had obtained a California resident insurance license in
26 November, 1994, but canceled same in May, 1995 upon making
27 application for the instant license in Arizona. He did not seek to convert
28 his prior California insurance license to a non-resident license.
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3 **CONCLUSIONS OF LAW**
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5 1. The Director has jurisdiction over this matter pursuant to the provisions
6 of A.R.S. §§ 20-161 and 20-290.

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8 2. The Director is empowered by statute with discretion to issue or deny
9 insurance licenses to applicants after reviewing and evaluating the entire
10 record of the matter, as presented at an administrative hearing.

11
12 3. The continued renewal of Mr. Perumean's real estate license and the
13 issuance of an insurance license by the State of California after the
14 incidents and the formal actions taken with respect to his license to
15 practice law in that State are not binding upon the Director in determining
16 eligibility for licensure in the State of Arizona.

17
18 4. It is concluded from all the documentary and testimonial evidence of
19 record that the within Applicant has not sustained his burden of proving
20 his entitlement to receive the license sought from the Department. On the
21 contrary, it was sufficiently demonstrated that those instances of
22 established acts of impropriety, considered together with the basis of
23 subsequent actions by the California tribunal in finding a violation of the
24 terms of probation and involuntarily converting his status to inactive
25 membership, constitute a record of dishonesty in business or financial
26 matters on the part of Applicant. Such record provided grounds for and a
27 reasonable basis for the Department to have denied Mr. Perumean's
28 application pursuant to the express language of A.R.S. § 20-290(B)(2).
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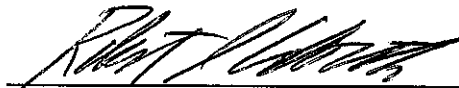
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2 5. The prior denial action cannot be and is not held to have been an
3 abuse of the Department's discretion nor was such denial otherwise
4 arbitrary, unjustified or unwarranted under all the circumstances.
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6 **RECOMMENDED ORDER**
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8 In view of the foregoing, it is recommended that the denial action by the
9 Department be affirmed and that the Director enter his Order denying the application for
10 a resident life and disability agent license submitted by Merlind J. Perumean, Jr.
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12 Dated: October 4, 1996.
13

14 OFFICE OF ADMINISTRATIVE HEARINGS

15 

16 _____
17 ROBERT I. WORTH
18 Administrative Law Judge
19
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21

22
23 Original transmitted on 10/4/96
24 by Chris Crawford; to:
25

26 John King, Director
27 Department of Insurance
28 2910 North 44th Street, #210
29 Phoenix, AZ 85018-7256

30 ATTN: Curvey Burton