STATE OF ARIZONA
FILED

MAR 13 1997

DEPT. OF INSURANCE
BY Kathy

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

In the Matter of: SETTLERS INSURANCE, INC.; RAINBOW PREFERRED INSURANCE, INC.; GENE R. MONTELEONE; IRENE ROBBINS; WILLIAM ROLLAND ARMSTRONG Respondents.	))))))))))	Docket No. 96A-198-INS **ORDER**

On February 14, 1997, the Office of Administrative Hearings, through Administrative Law Judge, Richard N. Blair, submitted Recommended Decision of Administrative Law Judge ("Recommended Decision"), a copy of which is attached and incorporated by this reference. The Director of the Arizona Department of Insurance has reviewed the Recommended Decision and enters the following order:

1. The recommended findings of fact and conclusions of law are adopted.

2. William Rolland Armstrong shall be suspended for five (5) days after the effective date of this Order and shall be required to pay a civil penalty in the amount of $1,000.00 within thirty (30) days of the effective date of this Order.

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).

The final decision of the Director may be appealed to the Superior Court of Maricopa County for judicial review pursuant to A.R.S. § 20-166. A party filing an appeal must notify the Office of Administrative Hearings of the appeal within ten days after filing the complaint commencing the approval, pursuant to A.R.S. § 41-1092.10.

EFFECTIVE this 12 day of March, 1997.

John A. Greene
Director of Insurance

A copy of the foregoing mailed
this 13th day of March, 1997

Charles R. Cohen, Deputy Director
John Gagne, Assistant Director
Catherine O'Neil, Assistant Director
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Rainbow Preferred Insurance, Inc.
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Phoenix, AZ 85028

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Scottsdale, AZ 85260-3107

Colonial Insurance Company of California
P.O. Box 4347
Anaheim, CA 92803-4347

Safeco Insurance Company of America
Safeco Plaza
Seattle, WA 98185

Safeway Insurance Company
790 Pasquinelli Drive
Westmont, IL 60559-1254

Dairyland Insurance Company
1800 N. Point Drive
Stevens Point, WI 54481

Hartford Casualty Insurance Company
Hartford Plaza
Hartford, CT 06115

Midland Risk Insurance Company
825 Crossover Lane, #112
Memphis, TN 38117-4936

Progressive Casualty Insurance Company
E61, 6300 Wilson Mills Road
Mayfield Village, OH 44143

Statewide Insurance Company
P.O. Box 799
Waukegan, IL 60079

Victoria Fire & Casualty Company
5915 Landerbrook Drive, #210
Cleveland, OH 44124-4058

Viking Insurance Company of Wisconsin
P.O. Box 5365
Madison, WI 53705-0365

Kathy Linder

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the matter of:	No. 96A-198-INS
SETTLERS INSURANCE, INC.; RAINBOW PREFERRED INSURANCE, INC.; GENE R. MONTELEONE; IRENE ROBBINS; WILLIAM ROLLAND ARMSTRONG Respondents	RECOMMENDED DECISION OF ADMINISTRATIVE LAW JUDGE

HEARING: January 30, 1997

APPEARANCES: William Rolland Armstrong appeared at the hearing; and Assistant Attorney General Mark Sendrow appeared on behalf of the Arizona Department of Insurance.

ADMINISTRATIVE LAW JUDGE: Richard N. Blair

At the start of the hearing, Assistant Attorney General Mark Sendrow, counsel for the Arizona Department of Insurance (the "Department"), stated that the Department had entered into a Consent Order with Settlers Insurance, Inc. and Gene Monteleone on January 28, 1997. On January 3, 1997, the Department entered a Default Order against Respondent Irene Robbins. The scope of the hearing in this matter was limited to paragraphs 15,16,17, 24, 25, 26, and 27 of the Notice of Hearing.

Based upon the entire record, the following recommended Findings of Fact, Conclusions of Law, and Recommended Order are made:

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FINDINGS OF FACT

1. At all times material to this matter, William Rolland Armstrong ("Mr. Armstrong") was and is the holder of a property and casualty agent license in the State of Arizona.

2. At all times material to this matter, Settlers Insurance, Inc. ("Settlers") was an Arizona corporation licensed to transact the business of insurance in the State of Arizona. Settlers principal place of business was at 102212 North 32nd Street, ,#K, Phoenix, Arizona (the "32nd Street Office") and Settlers maintained branch offices in Apache Junction and Maryvale.

3. At all times material to this matter, Settlers was the holder of a property and casualty agent/broker insurance license.

4. At all times material to this matter, Mr. Armstrong was employed by Settlers as a licensed insurance agent and in that capacity Mr. Armstrong's primary function was to provide insurance price quotes to prospective insureds over the telephone.

5. At all times material to this matter, Aprile Schreck was employed at Settlers' Apache Junction branch office as a customer service representative.

6. At all times material to this matter, Cecilia Losada was employed at Settlers' Maryvale branch office as a customer service representative.

7. Arnold Sniegowski, the Supervisor of Investigations for the Department, credibly testified that on August 12, 1996 he telephoned Settlers' 32nd Street Office using a fictitious name and requested a price quote for the minimum amount of automobile liability insurance coverage required by Arizona law.

8. The evidence established that on August 12, 1996, Mr. Armstrong spoke with Mr. Sniegowski and quoted Mr. Sniegowski a price for automobile insurance which included an additional $25.00 charge for 6-months of motor club/roadside coverage. However, Mr. Armstrong never disclosed to Mr. Sniegowski that the quoted insurance

premium included that additional charge for motor club/roadside coverage or that motor club/roadside coverage was an optional coverage.

9. K. Robert Hill ("Mr. Hill"), a Department Investigator, credibly testified that on August 12, 1996 he telephoned Settlers' 32nd Street Office and requested a price quote for the minimum amount of automobile liability insurance coverage required by Arizona law. However, the evidence established that Mr. Armstrong quoted Mr. Hill a price for automobile insurance coverage which included an additional $25.00 charge for 6 months of motor club/roadside coverage. Mr. Armstrong never disclosed to Mr. Hill that the quoted premium included that additional charge for motor club/roadside coverage or that motor club/roadside coverage was an optional coverage.

10. On August 12, 1996, Mr. Hill and Mr. Sniegowski went to Settler's Maryvale branch office and met with Ms. Losada to pay the required downpayment and to sign the documents required for coverage. Mr. Hill was asked to sign a receipt which stated that $77.00 was being paid to Progressive Insurance Companies, but Ms. Losada requested a total downpayment of $102.00 from Mr. Hill. Ms. Losada then informed Mr. Hill that he was "entitled" to roadside coverage. After Mr. Hill questioned the difference between the $77.00 being paid to Progressive and the $102.00 downpayment requested from Settlers, Ms. Losada informed Mr. Hill that roadside coverage had been included and the cost added to the insurance premium at the time Mr. Hill requested a price quote from the 32nd Street Office.

11. Ms. Schreck and Ms. Losada credibly testified that all quotes being generated from the 32nd Street Office by Mr. Armstrong included either a $25.00 or $50.00 premium for motor club/ roadside coverage. The $25.00 premium was for six-months coverage and one year of roadside coverage costs $50.00.

12. Ms. Schreck presented unrefuted testimony that during a meeting of Settlers' staff on July 13, 1996, which was attended by Mr. Armstrong, Mr. Armstrong informed Ms. Schreck that the customer service representatives were not to inform prospective insureds that the motor club/roadside coverage was optional at the time the insurance documents were being signed. The customer service representatives were

directed to show the potential insureds where to "X", initial or sign the various forms so that the potential insureds chose to accept the motor club/roadside coverage.

13. The evidence established that the computer generated quote sheets prepared by Mr. Armstrong indicated in the upper right hand corner the amount of motor club/roadside coverage being charged by showing the dollar amount next to the initials "RMC".

14. Ms. Schreck and Ms. Losada credibly testified that at all times material to this matter the policy at Settlers was not to show the quote sheet to a potential insured. The quote sheet was provided to the customer service representative to assist in the preparation of the application and supporting documentation.

15. Ms. Losada credibly testified that after an insured paid the downpayment for the insurance she would instruct the insured to sign the Roadside Motor Club receipt and instructed potential insureds where to sign or initial to accept motor club/roadside coverage. Only if the potential insured questioned inclusion of the roadside coverage would Ms. Losada agree to eliminate that coverage from the insured's policy.

16. Mr. Armstrong received a commission from Settlers for each motor club/road side coverage policy which Mr. Armstrong sold to policyholders.

17. Mr. Armstrong did not prepare the insurance applications for the insureds, but delegated that function to Settlers' customer service representative.

18. Mr. Armstrong argued that although he included motor club/roadside coverage in price quotes without disclosing to potential insureds that motor club/roadside service was included in the premium, he did not intend to conceal the cost of the motor club/roadside coverage because the documentation presented to the potential insureds by the customer service representatives provided potential insureds an opportunity to decline motor club coverage.

19. Although the documentation did provide an opportunity for a potential insured to decline motor club coverage, the evidence established that Mr. Armstrong knew that the policy in effect at Settlers was not to have the customer service

representatives inform potential insureds that the motor club coverage was an optional coverage. In fact, Mr. Armstrong participated in a July 13, 1996 meeting with customer service representatives wherein Mr. Armstrong informed customer service representatives not to inform potential insureds that the optional motor club coverage was included in the downpayment. Additionally, the evidence presented established that Settlers' customer service representatives presented the application and supporting documentation to potential insureds so as to have the potential insured sign or initial the space for acceptance of the optional motor club coverage. Furthermore, Mr. Armstrong, as a licensed insurance agent, should have fully disclosed to potential insureds, at the time of presenting the insurance price quote, that roadside coverage was optional and that the automobile liability premium being quoted also included a charge for optional motor club/roadside coverage. The amount of the roadside coverage premium and the duration of the roadside policy should also have been disclosed to prospective insureds by Mr. Armstrong.

CONCLUSIONS OF LAW

1. The Director has jurisdiction over this matter pursuant to A.R.S. § 20-161.

2. Mr. Armstrong's conduct as set forth above in the Findings of Facts, constitutes a willful violation of, or willful 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).

3. Mr. Armstrong's conduct as set forth above in the Findings of Fact, constitutes a conduct of affairs under the license showing Mr. Armstrong to be incompetent or a source of injury and loss to, or repeated complaint by, the public in violation of A.R.S. § 20-316(A)(7).

4. Mr. Armstrong's conduct as set forth above in the Findings of Fact, shows that Mr. Armstrong directly or indirectly misrepresented coverage and , committed unfair or deceptive acts or practices in the business of insurance in violation of A.R.S. §20-442.

5. Mr. Armstrong's conduct as set forth above in the Findings of Fact, constitutes the misrepresentation of the terms of any policy issued or to be issued or the benefits or advantages promised in violation of A.R.S. § 20-443(1).

6. Based on the above Findings of Fact, the Director has the authority to suspend, revoke, or refuse to renew Mr. Armstrong's insurance license, impose a civil penalty upon Mr. Armstrong and/or order restitution, pursuant to A.R.S. § 20-316(A) and 20-316 (C).

RECOMMENDED ORDER

Based upon the above, it is recommended that William Rolland Armstrong be suspended for a period of five (5) days after the effective date of the Order entered in this matter. It is further recommended that William Rolland Armstrong be required to pay a civil penalty in the amount of $1,000.00 within thirty (30) days of the effective date of the Order entered in this matter.

Done this day, February 14, 1997.

Richard N. Blair
Administrative Law Judge

Original transmitted by mail this
14 day of February 1997, to:

John Greene
Director
Department of Insurance
2910 North 44th Street, #210
ATTN: Curvey Burton
Phoenix, AZ 85018-7256

By