STATE OF ARIZONA
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DEPT. OF INSURANCE
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STATE OF ARIZONA

DEPARTMENT OF INSURANCE

In the Matter of: ROBERT CLARK BRANDENBURG dba BRANDENBURG & ASSOCIATES Respondent.	)	NO. 97A-073-INS **ORDER**

On August 21, 1997, the Office of Administrative Hearings, through Administrative Law Judge Lewis D. Kowal, submitted a "Recommended Decision of Administrative Law Judge" (the "Recommended Decision"), in the above-captioned matter which is attached and incorporated by this reference. The Director of the Arizona Department of Insurance ("Director"), after reviewing the Recommended Decision and the record in this matter, enters the following order:

1. The Director adopts the recommended findings of fact paragraphs 1-26.

2. The Director amends finding of fact 27 to read in its entirety as follows:

   27. Brandenburg testified that upon advice of his legal counsel, John Rood, who represented him at the Department of Real Estate proceedings, Brandenburg did not disclose the pending Department of Real Estate hearings to the Department of Insurance in the 1995 Renewal Application. Brandenburg also testified that at the time of submission of the 1995 Renewal Application to the Department of Insurance, that a person at the licensing counter for the Department stated that the Department of Insurance was aware of the Department of real estate proceedings and had all the documentation. Using contemporaneously recorded notes to refresh his recollection, Brandenburg described but could not

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identify by name the person at the Insurance Department's licensing counter with whom he had spoken about the submission of the 1995 Renewal Application.

The Director makes this change because the record does not support the inference suggested by the Administrative Law Judge that the Insurance Department's licensing counter personnel instructed Brandenburg to present false or misleading information on the 1995 Renewal Application. The record does not support Brandenburg's contention that the personnel of this Department, and in other instances, personnel of other state agencies advised him to omit information relevant to the processing of Brandenburg's renewal application. In contrast, the record demonstrates that the questions contained in the 1995 Renewal Application put Brandenburg on notice that the Director wanted to know about Docket No. H-1607, that Brandenburg understood these questions sufficiently well that he sought advice about whether to reveal this proceeding, and despite the clarity of the questions, voluntarily chose to answer the 1995 Renewal Application with a false or misleading response that misrepresented the facts relevant to the renewal of his license.

3. The Director amends finding of fact 28 to read in its entirety as follows:

> 28. On the 1995 Renewal Application, Brandenburg made the notation "See Last Application." Brandenburg testified that he intended to have the Department of Insurance refer to his prior application which disclosed the Par 3 matter. However, Brandenburg did not disclose to the Department of Insurance in his 1995 Renewal Application the proceedings before the Arizona Department of Real Estate involving Docket No. H-1607. Brandenburg's note "See Last Application" did not accomplish this disclosure because Brandenburg had not previously disclosed Docket No. H-1607 to the Department of Insurance.

The Director makes this change because Brandenburg did not disclose to the Department of Insurance, in connection with its processing of the 1995 Renewal Application, information about Arizona Department of Real Estate Docket No. H-1607.

4. The Director amends finding of fact 29 to read in its entirety as follows:

> 29. On the 1995 Renewal Application, Brandenburg should have disclosed that Docket No. H-1607 was pending before the Arizona Department of Real Estate based on the remand order of Judge Cheryl K. Hendrix in Case No. CV94-06978 and should have disclosed that Judge Hendrix had upheld the findings made by the Commissioner of the Department of Real Estate that Brandenburg had failed to report as required and the fines associated with those findings. While the administrative proceedings before the Department of Real Estate encompassed the activities regarding Par 3 for which Brandenburg had already had a hearing before the Department of Insurance, the proceedings before the Department of Real Estate constituted separate proceedings involving a license different than that at issue in the initial Par 3 proceedings at the Arizona Corporation Commission in Docket No. S-2618-I and at the Department of Insurance in Docket No. 7790. Moreover, the Department of Real Estate hearing in Docket No. H-1607 also included the Arizona Corporation Commission's revocation of Brandenburg's registration as a securities salesman for failure to make a scheduled restitution payment in violation of the above-mentioned consent order.

The Director makes this change because the record does not support the inference suggested by the Administrative Law Judge that the Department's knowledge about the Par 3 proceedings at the

Arizona Corporation Commission in Docket No. S-2618-I and at the Department of Insurance in Docket No. 7790 equates with the disclosure to the Insurance Department about Docket No. H-1607.

5. The Director amends finding of fact 30 to read in its entirety as follows:

> 30. Brandenburg testified that upon advice from John Rood and advice he received from an individual at the licensing counter at the Department, he checked "No" in response to question G on the 1996 Renewal Application. As was the case with the 1995 Renewal Application, Brandenburg used contemporaneously recorded notes to refresh his recollection. From these notes, Brandenburg described but could not identify by name the person at the Insurance Department's licensing counter with whom he had spoken about the submission of the 1996 Renewal Application.

The Director makes this change because the record does not support the inference suggested by the Administrative Law Judge that the Insurance Department's licensing counter personnel instructed Brandenburg to present false or misleading information on the 1996 Renewal Application. The record does not support Brandenburg's contention that personnel of this Department, and in other instances, personnel of other state agencies advised him to omit information relevant to the processing of Brandenburg's renewal application. In contrast, the record demonstrates that the questions contained in the 1996 Renewal Application put Brandenburg on notice that the Director wanted to know about ongoing proceedings affecting other licenses held by Brandenburg, that Brandenburg understood these questions sufficiently well that he sought advice about whether to reveal these proceedings, and despite the clarity of the questions, voluntarily chose to answer the 1996 Renewal Application with a false or misleading response that misrepresented the facts relevant to the renewal of his licenses.

6. The Director adopts the recommended findings of fact paragraphs 31 through 33.

7. The Director amends finding of fact 34 to read in its entirety as follows:

> 34. Brandenburg represented with regard to the above-mentioned the 1995 conversation with Ms. Switzer, that he had inquired about the information that should be submitted to the Arizona Department of Insurance concerning the 1997 Renewal Application and was informed that the Department of Insurance had all the information. Brandenburg suggested that he relied upon this conversation with Ms. Switzer to support his failure to disclose the Department of Real Estate proceedings under Docket No. H-1607 and the proceedings of the Arizona Corporation Commission under Docket No. S-3093-I.

The Director makes this change because the record does not support the inference suggested by the Administrative Law Judge that Ms. Switzer had instructed Brandenburg to present false or misleading information on the 1997 Renewal Application with respect to either the Real Estate proceedings under Docket No. H-1607 of the proceedings of the Arizona Corporation Commission under Docket No. S-3093-I. The record does not support Brandenburg's contention that he relied upon Ms. Switzer's advice, especially with respect to the decision to not disclose an event (the decision of the Arizona Corporation Commission in Docket No. S-3093-I), that had not occurred when the conversation took place. In contrast, the record contains ample evidence that the questions put Brandenburg on notice that the Director wanted to know about ongoing proceedings, Brandenburg understood these questions sufficiently well that he concedes he sought advice about what to disclose in the renewal application, and despite the clarity of the questions, chose to give false or misleading answers on the 1997 Renewal Application that misrepresented the facts relevant to the renewal of his license.

8. The Director adopts the recommended finding of fact paragraphs 35 through 37.

9. The Director rejects recommended finding of fact paragraph 38 in its entirety and replaces it with the following:

> 38. The record does not support Brandenburg's explanation for having failed to disclose Docket No. H-1607 and Docket No. S-3093-I. Although Brandenburg provided descriptions of the individuals with whom he dealt at the licensing counter of the Department of Insurance by refreshing his recollection from notes taken at the time of such occurrences, this testimony alone does not support Brandenburg's actions. If true, and he believed that a record needed to be maintained to support his version of events, it would seem that Brandenburg's notes would have named the Department personnel who advised him to present false or misleading information on his 1995 Renewal Application and his 1996 Renewal Application. Further, Brandenburg could have brought either of these people to the hearing to support the explanation he testified about. Similarly with respect to the 1997 Renewal Application, Brandenburg could have brought Ms. Switzer to the hearing to support the explanation that he acted on her advice when he refrained from revealing proceedings that the Renewal Application plainly sought information about, including the proceedings at the Arizona Corporation Commission in Docket No. S-3093-I, which had not yet occurred when the October 1995 conversation took place.

For the reasons noted above in the amended finding of fact 38, the Director makes this change because the record does not support the Administrative Law Judge's recommended conclusion that Mr.

Brandenburg's testimony was credible. The record does not support Brandenburg's contention that personnel of this Department, and in other instances, personnel of other state agencies advised him to fail to disclose material information to the Director in the renewal applications. Instead, the record demonstrates that the questions in the renewal applications put Brandenburg on notice that the Director wanted to know about ongoing proceedings, Brandenburg understood these questions sufficiently well that he sought advice about how to answer the questions, and despite the clarity of the questions, chose to give answers on the 1995 Renewal Application, the 1996 Renewal Application, and the 1997 Renewal Application that were false or misleading and that misrepresented the facts relevant to the renewal of his license.

10. The Director amends finding of fact 39 to read in its entirety as follows:

> 39. Brandenburg had the obligation, but failed to disclose the proceedings in Docket No. H-1607 and the proceedings in Arizona Corporation Commission in Docket No. S-3093-I to the Department of Insurance.

The Director makes this change because the record does not support the conclusion that Brandenburg acted reasonably in failing to disclose information that he had the obligation to disclose to the Department. The questions sought information that Brandenburg knew about. He does not dispute that the questions sought information about the proceedings at the Department of Real Estate and the Arizona Corporation Commission. Yet, rather than revealing this information, he instead claims reliance upon people whom he could not name or did not bring them to testify. His only evidence of having alerted the Department that more information existed was "See Last Application" note on the 1995 Renewal Applicant. However, this cryptic note does not constitute the disclosure of separate, distinct

proceedings that had never been brought to the Department's attention by Brandenburg, the person who bore the obligation to convey this information to the Department.

11. The Director rejects recommended finding of fact paragraph 40 in its entirety and replaces it with the following:

> 40. Brandenburg willfully failed to disclose the Department of Real Estate proceedings under Docket No. H-1607 and the proceedings of the Arizona Corporation Commission under Docket No. S-3093-I in the 1995 Renewal Application, the 1996 Renewal Application, and the 1997 Renewal Application.

The Director makes this change because the record does not support the Administrative Law Judge's recommended conclusion that Mr. Brandenburg did not act willfully. To the contrary, Brandenburg's made a conscious decision to refrain from disclosing information about disciplinary proceedings involving Brandenburg that had been initiated by the Department of Real Estate and the Corporation Commission. Brandenburg claims to have been justified in failing to disclose those proceedings. However, his assertion of this justification demonstrates deliberative judgment on his behalf that establishes the exercise of a knowing, volitional, deliberate choice on his part. He knew that licenses issued by other agencies were or had been the subject of administrative proceedings. He sought legal advice in at least two instances about whether to make the required disclosures. In each instance, despite his possession of this information material to the licensing decision to be made by the Director of Insurance, Brandenburg made the choice to withhold the material information about Docket No. H-1607 and Docket No. S-3093-I in the 1995 Renewal Application, the 1996 Renewal Application, and the 1997 Renewal Application

12. The Director rejects recommended conclusion of law paragraph 1 in its entirety and replaces it with the following:

> 1. Brandenburg's conduct as set forth above in the Findings of Fact constitutes willful misrepresentation of any fact required to be disclosed in any application pursuant to A.R.S. §20-291(G).

The Director makes this change because the record does not support the Administrative Law Judge's recommended conclusion that Mr. Brandenburg did not act willfully. To the contrary, Brandenburg knew that licenses issued by other agencies were subject to ongoing or concluded proceedings. He sought legal advice in at least two instances about whether to make the required disclosures. In each instance, despite his possession of this information material to the decision to be made by the Director of Insurance, Brandenburg made the choice to withhold the material information about the Department of Real Estate proceedings under Docket No. H-1607 and the proceedings of the Arizona Corporation Commission under Docket No. S-3093-I when he submitted renewal applications to the Department of Insurance.

13. The Director accepts recommended conclusion of law paragraph 2.

14. The Director rejects recommended conclusion of law paragraph 3 in its entirety and replaces it with the following:

> 3. The evidence of record establishes that Brandenburg's conduct as set forth above in the Findings of Fact constitutes the willful violation of, or a willful noncompliance with any provision of A.R.S., Title 20, or any lawful rule, regulation or order of the Director of the Department pursuant to A.R.S. §20-316(A)(2).

For the reasons discussed above in ¶12, the Director makes this change because the record does not support the Administrative Law Judge's recommended conclusion that Mr. Brandenburg did not act willfully. To the contrary, Brandenburg knew that licenses issued by other agencies were subject to ongoing or concluded proceedings. He sought legal advice in at least two instances about whether to make the required disclosures. In each instance, despite his possession of this information material to the decision to be made by the Director of Insurance, Brandenburg made the choice to withhold the material information about the Department of Real Estate proceedings under Docket No. H-1607 and the proceedings of the Arizona Corporation Commission under Docket No. S-3093-I in the renewal applications Brandenburg submitted to the Department of Insurance.

15. The Director accepts recommended conclusion of law paragraphs 4 and 5.

16. The Director rejects the recommended order and replaces it in its entirety with the following:

It is ordered:

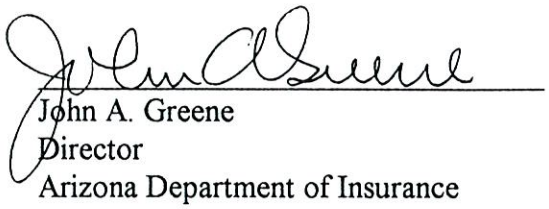
A. All insurance licenses of Robert Clark Brandenburg dba Brandenburg & Associates shall be revoked effective 45 days from the date of this order.

B. Robert Clark Brandenburg dba Brandenburg & Associates shall pay a civil penalty to the Department of Insurance, which shall be remitted to the general fund in the amount of $1,500.

The Director makes this change to the recommended order proposed by the Administrative Law

Judge because Brandenburg's willful misrepresentations in the renewal applications warrant revocation and a civil penalty.

Effective this 19 day of September, 1997.



John A. Greene
Director
Arizona Department of Insurance

A copy of the foregoing (with attachment)
sent by this 19th day of September, 1997 to:

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Esther Davis

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:	97A-073-INS
ROBERT CLARK BRANDENBURG dba BRANDENBURG & ASSOCIATES, Respondent.	**RECOMMENDED DECISION OF ADMINISTRATIVE LAW JUDGE**

HEARING: June 4, 1997 and July 29, 1997.

APPEARANCES: Assistant Attorney General Shelby Cuevas on behalf of the Arizona Department of Insurance and Laurence B. Stevens on behalf of the Respondent.

ADMINISTRATIVE LAW JUDGE: Lewis D. Kowal

FINDINGS OF FACT

1. Respondent Robert Clark Brandenburg dba Brandenburg & Associates ("Brandenburg") is presently and at all material times was licensed by the Arizona Department of Insurance ("Department of Insurance") as a life and disability, variable annuity agent and as a property and casualty broker, License No. 145361.

2. Brandenburg's life and disability and variable annuity insurance agent licenses expire on January 31, 1999. Brandenburg's property and casualty broker's license expires January 31, 1998.

3. On September 12, 1990, the Arizona Corporation Commission ("Commission") issued a Notice of Opportunity for Hearing Regarding Proposed Order to Cease and Desist In the matter of the Offering of Securities By: Robert C. Brandenburg, CRD#1171044, et al., Docket No. S-2618-I which alleged that Brandenburg offered for sale and sold unregistered securities in connection with a series of investment programs involving the breeding and racing of greyhound dogs ("Par 3").

4. On September 9, 1991, the Commission entered an Opinion and Order in Docket No. S-2618-I finding that Brandenburg had violated the antifraud provisions of A.R.S. §44-1991 in the offering for sale and sale of unregistered securities. The

Commission ordered Brandenburg to cease and desist such activities, to make restitution to investors and to pay a civil penalty.

5. On June 15, 1992, the Commission issued a Notice of Opportunity for Hearing Regarding Proposed Revocation of Salesman Registration, In the matter of the Offering of Securities By: Robert C. Brandenburg, CRD#1171044, Docket No. S-2905-I, alleging that on March 27, 1992, the Securities Division of the Commission issued Brandenburg a salesman registration conditioned on his making restitution and paying civil penalties pursuant to the prior Commission's Opinion and Order issued in Docket No. S-2618-I. On August 26, 1992, Brandenburg entered into a consent order with the Commission In the Matter of Offering of Securities by: Robert C. Brandenburg, CRD#1171044, Docket No. S-2905-I, Decision No. 57984, wherein Brandenburg's securities salesman registration was suspended for 30 days and Brandenburg was ordered to make restitution to specified investors according to a payment schedule. The amount of restitution was subject to reduction upon verification to the satisfaction of the Securities Division of the Commission that certain investors had waived their right to restitution. It was further ordered that Brandenburg's failure to make a scheduled restitution payment would result in automatic revocation of his security salesman's registration. There was no finding that Brandenburg knowingly or intentionally violated the securities laws.

6. As a result of the above-mentioned actions by the Commission, a hearing was held before the Department of Insurance In the Matter of Robert Clark Brandenburg dba Brandenburg & Associates, Docket No. 7789 ("Docket No. 7789"), on allegations that Brandenburg has a record of dishonesty in business and financial matters within the meaning of A.R.S. §20-290(B)(2). In that proceeding, an Order was issued by Susan Gallinger, Director of Insurance, on October 19, 1992, wherein Brandenburg was determined to have such a record but no disciplinary action was taken against Brandenburg as a result of that hearing.

7. At this hearing, the Department of Insurance contended that Brandenburg failed to disclose civil and administrative proceedings as set forth below in several renewal applications which he filed with the Department of Insurance.

8. Brandenburg claimed that there was no need to disclose any of the civil or administrative proceedings as set forth below on the basis that they all stem from and/or relate to his Par 3 activities and the action taken by the Commission regarding those activities. Therefore, Brandenburg claimed that "Double Jeopardy" applies and he cannot be punished for prior conduct for which he has already been sanctioned or

which has been the subject of prior administrative proceedings. Brandenburg further contended that the Department of Insurance was aware of those proceedings and that upon advice received from employees of the Department of Insurance, an Assistant Attorney General who represented the Department of Insurance on various matters, as well as upon advice of counsel, he did not have to make such disclosure.

9. On November 26, 1993, the Commission entered an Opinion and Order in Docket No. S-2905-I, bearing Decision No. 58470, revoking the registration of Brandenburg as a securities salesman.

10. On January 11, 1995, Brandenburg filed an application to renew his life, disability and variable annuity insurance agent licenses ("1995 Renewal Application") with the Department of Insurance.

11. Brandenburg answered "No" to Question F of the 1995 Renewal Application which asked: "ARE ANY criminal, civil, administrative or other judicial or quasi-judicial proceedings of any kind currently pending against you IN ANY jurisdiction?"

12. On February 8, 1994, the Commissioner of the Arizona Department of Real Estate ("Department of Real Estate") entered an Order In the matter of the real estate salesperson's license of Robert Clark Brandenburg, No. H-1607 (RES) ("Docket No. H-1607"), revoking Brandenburg's salesperson's license and assessing a civil penalty against him in the sum of $5,000.00. In that Order, the Commissioner found that Brandenburg failed to make reports on three occasions, that he had been guilty of conduct which constitutes fraud and that he failed to show that he was a person of honesty, truthfulness and good character.

13. On May 9, 1994, Brandenburg appealed the above-mentioned Commissioner's Order in Robert Carl Brandenburg v. Arizona Department of Real Estate, Maricopa County Superior Court, No. CV94-06978 ("Case No. CV94-06978").

14. On December 23, 1994, Superior Court Judge Cheryl K. Hendrix entered an Order in Case No. 94-06978 affirming the finding of Brandenburg's failing to file reports as required by law and upholding the fines associated with those violations. The Court reversed the findings and fines associated with fraud and with Brandenburg's character. The Court also reversed the revocation of Brandenburg's real estate salesperson's license and remanded that matter to the Department of Real Estate for further proceedings.

15. On October 12 and October 26, 1995, and November 14, 1995, a hearing on remand was held before the Department of Real Estate, in Docket No. H-1607.

16. On the 1995 Renewal Application filed with the Department of Insurance, Brandenburg did not disclose that Docket No. H-1607 was pending before the Department of Real Estate.

17. On November 16, 1995, Brandenburg filed an application to renew his property and casualty insurance broker's license ("1996 Renewal Application") with the Department.

18. Brandenburg answered "No" to question G of the 1996 Renewal Application which asked: "ARE ANY criminal, civil, administrative, or other judicial or quasi-judicial

19. On the 1996 Renewal Application filed with the Department of Insurance, Brandenburg did not disclose that an administrative hearing had been held before the Department of Real Estate, Docket No. H-1607, and that entry of a final Order was pending.

20. On July 20, 1995, the Securities Division of the Arizona Corporation Commission ("Commission") issued a Notice of Opportunity for Hearing Regarding Proposed Denial of Application for Securities Salesman Registration, In the matter of the Securities Salesman Registration Application of: Robert Clark Brandenburg, CRD#1171044, Docket No. S-3093-I, alleging that Brandenburg violated an Order of the Commission and that he had been guilty of a fraudulent act or practice in connection with the purchase or sale of securities.

21. On August 17, 1995, a hearing was held before the Commission in Docket No. S-3093-I on the Commission's denial of Brandenburg's application for registration as a securities salesman. On the 1996 Renewal Application, Brandenburg failed to disclose that the hearing on Docket No. S-3093-I before the Commission was pending.

22. On November 28, 1995, the Commission issued an Opinion and Order in Docket No. S-3093-I bearing Decision No. 59390, denying Brandenburg's application for registration as a securities salesman.

23. On December 3, 1996, Brandenburg filed an application to renew his life, disability and variable annuity insurance agent license ("1997 Renewal Application") with the Department of Insurance.

24. Brandenburg answered "No" to Section V, questions C and E(6) of the 1997 Renewal Application asked:

> C. Have you had any professional, vocational, business license or certification refused, denied, suspended, revoked or restricted, or a fine imposed by any public authority that has not previously been disclosed by you to this agency in a license application?
>
> ...

E. Have you had any judgment, order or other determination been issued or made against you IN ANY criminal, civil, administrative or other judicial or quasi-judicial proceeding of any kind in any jurisdiction that has not previously been disclosed by you to this agency in a license application based on any of the following:

...

6) any other reason?"

25. On December 28, 1995, Administrative Law Judge Richard N. Blair entered a Final Order in Docket No. H1607 having been delegated such authority by the Commissioner of the Department of Real Estate. In the Final Order, Judge Blair determined that Brandenburg was not a person of honesty, truthfulness and good character. Judge Blair suspended Brandenburg's real estate license for nine months and assessed a civil penalty of $1,000.00.

26. On the 1997 Renewal Application, Brandenburg did not disclose the suspension and fines imposed by the Department of Real Estate. Brandenburg also failed to disclose in the 1997 Renewal Application that an Opinion and Order of the Commission was pending in Docket S-3093-I.

1995 RENEWAL APPLICATION

27 . Brandenburg testified that upon advice of his legal counsel, John Rood, who represented him at the Department of Real Estate proceedings, Brandenburg did not disclose the pending Department of Real Estate hearings to the Department of Insurance in the 1995 Renewal Application. Brandenburg also testified that at time of submission to the Department of Insurance, and the person at the licensing counter for the Department stated that the Department of Insurance was aware of the Department of Real Estate proceedings and had all the documentation.

28. On the 1995 Renewal Application, Brandenburg made the notation "See Last application". Brandenburg testified that he intended to have the Department of Insurance refer to his prior application which disclosed the Par 3 matter.

29. On the 1995 Renewal Application, Brandenburg should have disclosed that Docket No. H-1607 was pending before the Arizona Department of Real Estate based on the remand Order of Judge Cheryl K. Hendrix in Case No. CVB 94-06978 and should have disclosed that Judge Hendrix had upheld the findings made by the Commissioner of the Department of Real Estate that Brandenburg had failed to report as required and the fines associated with those findings. The administrative proceedings before the Department of Real Estate encompassed the activities regarding Par 3 for which Brandenburg had already had a hearing before the

Department of Insurance. However, the Department of Real Estate hearing also included Commission's revocation of Brandenburg's registration as a securities salesman for failure to make a scheduled restitution payment in violation of the above-mentioned consent order.

1996 RENEWAL APPLICATION

30. Brandenburg testified that upon advice from John Rood and advice he received from an individual at the licensing counter at the Department, he checked "No" in response to question G on the 1996 Renewal Application.

31. Brandenburg should have disclosed on the 1996 Renewal Application that the Final Order on the remand hearing before the Department of Real Estate was pending.

32. Brandenburg should have disclosed on the 1996 Renewal Application that an Opinion and Order by the Commission was pending in Docket No. S-3093-I.

1997 RENEWAL APPLICATION

33. Brandenburg testified that on October 26, 1995, he spoke with Assistant Attorney General Gerrie Switzer who represented the Arizona Department of real Estate at the above-mentioned proceedings before the Department of Real Estate and also represented the Department of Insurance on various matters

34. Brandenburg represented with regard to the above-mentioned conversation with Ms. Switzer, that he had inquired as to the information that should be submitted to the Department of Insurance concerning the 1997 Renewal Application and was informed that the Department of Insurance had all the information.

35. Brandenburg should have disclosed on the 1997 Renewal Application that, as a result of the remand hearing before the Arizona Department of Real Estate in Docket No.H-1607, his real estate sales person's license was suspended for nine months and he was assessed a $1,000.00 civil penalty.

36. Brandenburg should have also disclosed on the 1997 Renewal Application that the Commission entered a Decision and Order on November 28, 1997, in Docket No. S-3093-I denying his application for registration as a securities salesman.

FURTHER FINDINGS

37. Brandenburg testified, he has been licensed in the insurance field in the State of Arizona since 1977 and has had no other complaints filed with the Department of Insurance other than those relating to his Par 3 activities and the instant matter.

38. The testimony of Brandenburg as set forth above was determined to be credible. Brandenburg provided descriptions of the individuals he dealt with at the licensing counter of the Department by refreshing his recollection from notes taken at the time of such occurrences.

39. Under the circumstance, with the overlapping of proceedings and continued proceedings stemming from Brandenburg's Par 3 activities, it was not unreasonable for Brandenburg to have reached the conclusion that certain proceedings did not need to be disclosed on the above-mentioned renewal applications. However reasonable his actions were, technically, Brandenburg was required in the 1995, 1996 and 1997 renewal applications submitted to the Department of Insurance, to disclose certain proceedings as set forth above.

40. There was no evidence presented at the hearing to show that Brandenburg's failure to disclose the above-mentioned proceedings in the above-mentioned applications was willful.

CONCLUSIONS OF LAW

1. The evidence of record does not support a determination that Brandenburg's conduct as set forth above in the Findings of Fact constitutes a willful misrepresentation of any fact required to be disclosed in any application pursuant to A.R.S.§ 20-291(G).

2. The evidence of record established that Brandenburg has a record of dishonesty in business or financial matters in violation of A.R.S. §20-316 (A)(1) together with A.R.S. §20-290(B)(2).

3. The evidence of record does not establish that Brandenburg's conduct as set forth above in the Findings of Fact constitutes the willful violation of, or a willful noncompliance with, any provision of A.R.S., Title 20, or any lawful rule, regulation or order of the Director of the Department pursuant to A.R.S. 20-316 (A)(2).

4. Brandenburg's conduct as set forth above in the Findings of Fact constitutes the existence of misrepresentation in obtaining or attempting to obtain any insurance license in violation of A.R.S. §20-316(A)(3).

. . .

5. Grounds exist for the Director of the Department of Insurance to suspend, revoke or refuse to renew Brandenburg's insurance license and to impose a civil penalty upon Brandenburg pursuant to A.R.S. §§20-316(A) and 20-3169(C).

RECOMMENDED ORDER

Based on the above, the Administrative Law Judge recommends that the

Director of the Department of Insurance impose a civil penalty in the amount of $600.00 to be paid to the Department of Insurance within 60 days of the effective date of the Order issued in this matter.

Done this day, August 21, 1997.

Lewis D. Kowal
Administrative Law Judge

Original transmitted by mail this 21 day of August, 1997, to:

Mr. John A. Greene, Director
Department of Insurance
ATTN: Curvey Burton
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By Chris Crawford Thomson