STATE OF ARIZONA
FILED

AUG 1 1 1997

DEPT. OF INSURANCE
BY ED

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

In the Matter of:	)	Docket No. 97A-113-INS
	)	
ROBERT DUANE BJERKEN,	)	**ORDER**
	)	
Respondent.	)	
	)	

On August 7, 1997, the Office of Administrative Hearings, through Administrative Law Judge Robert I. Worth, submitted a "Decision and Recommended Order" ("Recommended Order"), a copy of which is attached and incorporated by this reference. The Director of the Arizona Department of Insurance has reviewed the Recommended Order and enters the following order:

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

2. The life and disability agent's license held by Robert Duane Bjerken is revoked.

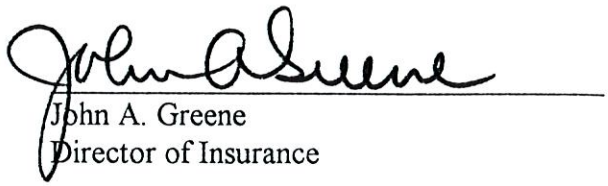
NOTIFICATION OF RIGHTS

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 appeal, pursuant to A.R.S. §41-1092.10.

DATED this 11 day of August, 1997



John A. Greene
Director of Insurance

A copy of the foregoing mailed
this 11th day of August, 1997

Charles R. Cohen, Deputy Director
Catherine O'Neil, Assistant Director
Scott Greenberg, Business Administrator
John Gagne, Assistant Director
Bonnie Carrillo, Investigator
Maureen Catalioto, Supervisor
Department of Insurance
2910 N. 44th Street, Suite 210
Phoenix, AZ 85018

Robert Duane Bjerken
P.O. Box 9664
Scottsdale, AZ 85252

Robert D. Bjerken
8621 E. Coronado St.
Scottsdale, AZ 85257

Security-Connecticut Life Insurance Company
20 Security Drive
Avon, CT 06001-4226

Gem Life Insurance Company
P.O. Box 770
Deerfield, IL 60015-0770

Golden Rule Insurance Company
712 Eleventh St.
Lawrenceville, IL 62439

Esther Davis

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:	Docket No. 97A-113-INS
ROBERT DUANE BJERKEN,	DECISION AND RECOMMENDED ORDER
Respondent.	

The above-entitled matter came on for hearing on August 4, 1997 pursuant to advance notice duly sent to all parties. The Arizona Department of Insurance (herein called the "Department") was represented by Assistant Attorney General, Shelby L. Cuevas, and the named Respondent, Robert Duane Bjerken, failed to appear. Evidence was presented, and based upon the entire record, the following Findings of Fact, Conclusions of Law and Recommended Order have been prepared and are hereby submitted by the undersigned Administrative Law Judge for review, consideration, approval and adoption by the Director of the Department (herein called the "Director").

FINDINGS OF FACT

1. The Department's uncontroverted evidence revealed that Respondent, Robert Duane Bjerken, has been and is currently the holder of a life and disability insurance agent's license, number 366523, issued by the Department.

2. The aforesaid insurance license has been repeatedly renewed by Mr. Bjerken on successive occasions at two year intervals following the filing of renewal applications. Since the renewal application filed on April 16, 1991, three separate subsequent applications were completed and filed by Respondent, respectively dated February 16, 1993, February 22, 1995 and March 8, 1997. The renewed license presently held by Mr. Bjerken is due to expire on April 30, 1999.

3. Each of the renewal application forms contained specific questions relating to events affecting an applicant which occurred since the last filed license application. Spaces were provided next to each question for the insertion of a "yes" or "no" response from the individual completing and submitting the application form.

4. The renewal application form filed by Respondent in 1993 (State's Exhibit 3), which was next in time to his previously filed 1991 renewal application, included as question number 4 the following:

> "4. *Since your last application or renewal thereof, have you had any* professional, vocational, or business license denied, suspended, revoked, or restricted, or a *fine imposed by any public authority*, or withdrawn any application for or surrendered any such license to avoid disciplinary action?" (Emphasis added).

It was shown that Mr. Bjerken answered this question in the negative.

5. The documentary evidence presented at the hearing tended to establish that Mr. Bjerken had been one of the individual subjects of an Opinion and Order by the Arizona Corporation Commission in Docket Number S-2686-I (Decision No. 57401) entered on June 6, 1991 (State's Exhibit 5). This was less than two months after Respondent filed his 1991 application for renewal of his insurance license and approximately twenty months before the filing of his 1993 renewal. The said Opinion found Mr. Bjerken in violation of statutes prohibiting his offer and sale of unregistered securities in Arizona and without being registered as a salesman or dealer, as well as concluding the he had made such sales through material misrepresentations and omissions of material facts, constituting a fraud upon investors.

6. The 1991 final Order entered by the Arizona Corporation Commission provided for the assessment against Mr. Bjerken of an administrative penalty in the amount of $7,000.00, for the joint and several obligation of Mr. Bjerken and others to make restitution to seven identified investors in the aggregate sum of $67,000.00 and for Mr. Bjerken and others to Cease and Desist from engaging in certain described

activities involving the future sale of securities in this State. The foregoing administrative proceeding and its results are determined to constitute data and information that was required to be disclosed by Respondent on the 1993 application form in response to question number 4.

7. The renewal application form filed by Respondent in 1997 (State's Exhibit 1), which was next in time to his previously filed 1995 renewal application, included as questions B and D the following:

> "B. *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?*
>
> .....
>
> "D. *Have you had any* judgment, *order or other determination*, including any criminal conviction 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:*
>
> 1. Misappropriation, conversion or the withholding of monies?
> 2. Incompetence or *a source of injury and/or loss to anyone?*
> 3. *Dishonesty in business or financial matters?*
> 4. *Fraud or misrepresentation?*
> 5. Any cause arising out of an insurance transaction?"
>
> (Emphasis added).

It was shown that Mr. Bjerken answered both of these questions in the negative.

8. The documentary evidence presented at the hearing tended to establish that Mr. Bjerken had been one of the individual subjects of another Opinion and Order by the Arizona Corporation Commission in Docket Number S-3976-I (Decision No. 59923) entered December 18, 1996 (State's Exhibit 7). This was approximately twenty two

months after Respondent filed his 1995 application for renewal of his insurance license and less than three months before the filing of his 1997 renewal application. The entry of this Order had followed the sending to Respondent of a Notice of Opportunity for Hearing with respect to the form and content of the proposed Order to be entered in that case (State's Exhibit 6), to which notice Respondent had failed to respond or to request any hearing, thereby admitting all allegations of wrongdoing. The said Opinion found Mr. Bjerken in violation of statutes prohibiting his offer and sale of unregistered securities in Arizona and without being registered as a salesman or dealer, as well as concluding that he had made such sales through the making of material misrepresentations to investors and further that his conduct operated as a fraud or deceit upon investors.

9. The 1996 final Order entered by the Arizona Corporation Commission provided for the assessment of an administrative penalty against Mr. Bjerken in the amount of $42,000.00, for his obligation to make restitution in the amount of $119,000.00, to be held in trust by the Arizona Attorney General's Office for distribution to appropriate investors, and for Mr. Bjerken to Cease and Desist from engaging in certain described activities involving future sales of securities in this State. The foregoing administrative proceeding and its results are determined to constitute data or information that was required to be disclosed by Mr. Bjerken on the 1997 application form in response to questions B and D.

10. Except for a very minimal monetary sum of $175.00 towards the restitution ordered in the earlier proceeding before the Corporation Commission, Mr. Bjerken was not shown to have paid all or any significant portion of his restitution obligations nor to have paid any part of the administrative penalties assessed against him.

11. Under all the circumstances, including the proximity in time from the entry of the Orders by the Corporation Commission to the filing of the next renewal application for his insurance license, an inference is fully supportable that Mr. Bjerken's factually incorrect answers to specific questions on the application forms, as well as his failure to affirmatively disclose the rather serious findings of wrongdoing and the substantial

sanctions imposed against him, was intentionally misleading and further constitute material misrepresentations to the Department of Insurance.

12. The underlying actions, omissions and conduct on the part of Respondent upon which the prior disciplinary proceedings before another State agency were based are additionally found and determined to constitute a record of dishonesty in business or financial matters.

13. By his failure to attend and participate in the scheduled hearing, Respondent presented no evidence in defense or in mitigation of the insurance law violations charged in the Notice of Hearing.

CONCLUSIONS OF LAW

1. The Director of the Department has jurisdiction over this matter pursuant to the provisions of A.R.S.§§ 20-161 and 20-290.

2. The overall course of conduct on the part of or attributable to Mr. Bjerken which formed the basis for final disciplinary Orders in two separate Corporation Commission actions serve to constitute a record of dishonesty in business or financial matters in violation by Respondent of the provisions of A.R.S.§20-290(B)(2).

3. The undisputed evidence of record sufficiently established that Mr. Bjerken's actions in failing to disclose the facts and the results of two separate Corporation Commission disciplinary proceedings adversely impacting upon him and in untruthfully answering specific questions as to such facts on renewal applications filed with the Department constitute willful misrepresentations of facts required to be disclosed to the Department in violation by Respondent of A.R.S.§20-291(G).

4. The actions of Mr. Bjerken further constitute misrepresentation or fraud in obtaining the renewal of his life and disability agent's insurance license and provide grounds, pursuant to A.R.S.§§ 20-316(A)(3), and also A.R.S.§20-316(C), for the

Director to suspend, revoke or refuse to renew Respondent's license or to impose a civil penalty against him.

5. The evidence of record did demonstrate that Mr. Bjerken failed to comply with the provisions of two separate Orders of the Arizona Corporation Commission with respect to imposed restitution obligations and administrative penalties, and in one instance, the 1991 Order, with respect to ceasing and desisting from future securities law violations. However, such acts or omissions by Mr. Bjerken did not constitute willful violations or non-compliance with rules, regulations or orders of the director within the meaning of the provisions of another statute charged in the Notice of Hearing as having been violated by Respondent. The term "director" as used in the provisions of the State's Insurance Laws is defined in A.R.S.§20-102 to indicate the director of the Department of Insurance and may not properly be construed to include directors or commissioners of other state or federal agencies. Consequently, no finding of any violation by Respondent of A.R.S.§20-316(A)(2) is supportable hereunder.

6. Under the proven facts and circumstances of this case, including Mr. Bjerken's default in appearance at the scheduled hearing, the imposition by the Director of a license revocation appears to be appropriate and fully warranted under the totality of the evidence of record hereunder.

RECOMMENDED ORDER

In view of the foregoing, it is recommended that the Director enter his Order revoking the life and disability agent's license held by Robert Duane Bjerken.

Dated: August 7, 1997.

OFFICE OF ADMINISTRATIVE HEARINGS

Robert. I. Worth
Administrative Law Judge

Original transmitted on 8/7/97

by: Chris Crawford Thomas, To:

Mr. John A. Greene, Director
Department of Insurance
2910 North 44th Street, #210
Phoenix, AZ 85018-7256

ATTN: Curvey Burton