STATE OF ARIZONA
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OCT 16 1997

DEPT. OF INSURANCE
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STATE OF ARIZONA

DEPARTMENT OF INSURANCE

In the Matter of: EUGENE WALTER CAMARA, License No. 35263, and CBIA, Inc., License No. 16414, Respondents.	))))))))	Docket No. 97A-134-INS **ORDER**

On September 23, 1997, the Office of Administrative Hearings, through Administrative Law Judge Lewis D. Kowal, submitted "Recommended Decision of Administrative Law Judge" ("Recommended Decision"), a copy of which is attached and incorporated by this reference. Pursuant to A.R.S. § 41-1092.08(B), the Director of the Arizona Department of Insurance declines to review the Recommended Decision. Therefore, pursuant to A.R.S. § 41-1092.08(D)(1), the Recommended Decision is the final administrative decision.

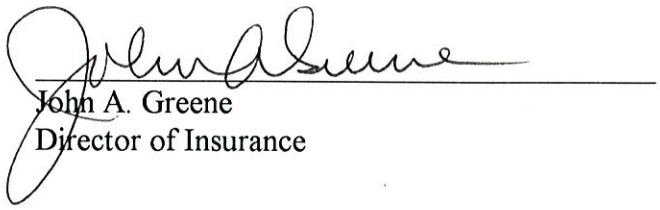
NOTIFICATION OF RIGHTS

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 16 day of October, 1997



John A. Greene
Director of Insurance

A copy of the foregoing mailed
this 16th day of October, 1997

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IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:	97A-134-INS
EUGENE WALTER CAMARA, License No. 35263, and CBIA, INC., License No. 16414,	**RECOMMENDED DECISION OF ADMINISTRATIVE LAW JUDGE**
Respondents.	

HEARING: September 8, 1997

APPEARANCE: Assistant Attorney General Shelby Cuevas appeared on behalf of the Arizona Department of Insurance; Respondents Eugene Walter Camara and CBIA, Inc. did not appear at the hearing

ADMINISTRATIVE LAW JUDGE: Lewis D. Kowal

Based on the record of this matter, the following recommended Findings of Fact, Conclusions of Law and Recommended Order are made:

FINDINGS OF FACT

1. Eugene Walter Camara ("Mr. Camara") holds, and at all material times, held a property and casualty insurance agent and broker license issued by the Arizona Department of Insurance ("Department"), license number 35263 which expires December 31, 1998.

2. CBIA, Inc. ("CBIA") holds, and at all material times, held a property and casualty insurance agent and broker license issued by the Department, license number 16414 which expires June 30, 1998.

3. At all material times, Mr. Camara was and currently is the president of CBIA.

4. At all material times, New Hampshire Insurance Company ("New Hampshire") was and is an insurance company authorized to transact the business of insurance in the State of Arizona.

5. At all material times, New Hampshire had a general agency agreement with North American Warranty Administrators, Inc. ("North American") under which North American acted as an administrator for New Hampshire for mechanical breakdown and warranty insurance for motor vehicles produced in Arizona.

6. At all material times, CBIA had an agency agreement with North American to sell mechanical breakdown and warranty insurance for motor vehicles.

7. On March 7, 1997, Gaisford Insurance Agency ("Gaisford") completed an application for mechanical breakdown insurance to be issued to Lambert and Susan Girmscheid by New Hampshire through its general agent, CBIA. Gaisford collected $673.00 premium from the Girmscheids and forwarded $533.40, the net payment less Gaisford's commission, with the application to CBIA by mail on March 7, 1997.

8. On March 13, 1997, Gaisford's check in the amount of $533.40 was endorsed by CBIA and deposited into CBIA's bank account. North American never received the Girmscheid's application nor any premium payment on behalf of the Girmscheids.

9. Despite Gaisford's requests that Respondents return the premium forwarded on behalf of the Girmscheids, Respondents failed to return such premium. Consequently, Gaisford submitted the $533.00 premium to the New Hampshire which issued to Girmscheids the mechanical breakdown insurance policy retroactively, effective as of March 13, 1997. Subsequently, New Hampshire reimbursed Gaisford for that premium. To date, Respondents have not remitted the $533.00 premium to North American, New Hampshire or returned it to Gaisford or the Girmscheids.

10. In response to requests for return of the Girmscheids' premium, Mr. Camara sent a fax message to Gaisford on April 10, 1997, which stated that attempts were being made to track down the Girmscheids' insurance application which was lost in transit, misplaced or "hung up in processing". Additionally, Mr. Camara represented that the premium would be returned should the Grimscheids not wish to proceed with coverage.

11. On September 13, 1996, Spencer & Associates Insurance Agency ("Spencer") submitted an application for mechanical breakdown insurance coverage for James Robles ("Mr. Robles") to be issued by New Hampshire through CBIA. Along with that application, Spencer submitted the premium amount of $1,721.85. Three months later, New Hampshire issued that policy.

12. On January 7, 1997, Mr. Robles sent a letter to Spencer to cancel the New Hampshire mechanical breakdown insurance policy and requested a full refund because he was still within the 60 day grace period from the time he received his policy.

13. Forty-five days after Mr. Robles' cancellation request Spencer contacted CBIA and was directed to North American. Upon contacting North American, Spencer learned that North American never received Mr. Robles' cancellation request from

CBIA. Spencer then faxed Mr. Robles' cancellation request to North American and the policy in question was canceled.

14. On March 20, 1997, North American issued Mr. Robles' refund check in the amount of $1,338.13, representing the unearned premium, to CBIA which was subsequently endorsed by CBIA and deposited into CBIA's bank account. To date, CBIA has not returned the $1,338.13 refund to Spencer or Mr. Robles.

15. On December 10, 1996, Allen Ernst ("Mr. Ernst") submitted an application for mechanical breakdown insurance coverage to be issued by New Hampshire through CBIA. Along with that application, Mr. Ernst submitted a premium payment.

16. On December 10, 1996, Mr. Ernst forwarded to CBIA a request to cancel the New Hampshire policy because Mr. Ernst had sold the motor vehicle covered under that policy.

17. On February 18, 1997, Mr. Ernst contacted North American concerning a refund of the unearned premium and was informed that a refund check had been forwarded to CBIA.

18. The evidence established that on March 10, 1997, a check issued by North American made payable to CBIA in the amount of $245.27 regarding Mr. Ernst was endorsed by CBIA and deposited into CBIA's bank account. To date, CBIA has not returned the $245.27 unearned premium to Mr. Ernst or his insurance agency, Bob Ernst Insurance.

19. The Department submitted into evidence court documents establishing that Respondents are subject to a temporary restraining order with respect to its activities concerning New Hampshire. It is determined that the civil matter in which the temporary restraining order was issued is not relevant to the instant proceeding.

20. The Department also presented evidence concerning Respondents' activities involving Western Family Insurance Company. The Notice of Hearing does not contain any allegations regarding Western Family Insurance. Therefore, such evidence is disregarded by the Administrative Law Judge as being outside the scope of this hearing.

21. The Department contended that Mr. Camara failed to appear before the Department on May 27, 1997 as ordered by the Director of the Department. In support of that contention, the Department produced a copy of the Subpoena issued by the Department to secure the appearance of Mr. Camara along with a copy of the return receipt card evidencing Mrs. Camara' signature acknowledging receipt of the Subpoena.

22. A.R.S. §20 -160 (C) provides that a Subpoena is to be served in the same manner as if issued by Superior Court. Rule 45 of the Rules of Civil Procedure provides for personal service of a Subpoena upon the person named therein for proper service in Superior Court.

23. Proof of service of the Subpoena by mail upon Mrs. Camara, in and of itself, does not establish service of the Subpoena upon Mr. Camara. Therefore, the Department did not present evidence that showed proper service of the Subpoena upon Mr. Camara.

CONCLUSIONS OF LAW

1. Respondents' conduct as set forth above in the Findings of Fact constitutes misappropriation or conversion to their own use or illegal withholding of monies belonging to insurers and others received in or during the conduct of business under Respondents' insurance licenses through its use in violation of A.R.S.§20-316 (A)(4).

2. Respondents' conduct as set forth above in the Findings of Fact, constitutes a conduct of affairs under their insurance licenses showing them to be incompetent or a source of injury and loss to the public or any insurer within the meaning of A.R.S.§ 20-316(A)(7).

3. The evidence of record did not establish that Respondents knowingly and with an intent to defraud divert or attempt or conspire to divert monies of an insurer or other person within the meaning of A.R.S.§ 20-463(A)(4)(a) and (b).

4. While the evidence established that Mr. Camara failed to appear before the Department on May 27, 1997, the evidence did not establish that Mr. Camara was properly served with a Subpoena ordering him to appear and, as such, does not constitute a violation of a willful violation of an order of the Director of the Department within the meaning of A.R.S. §20-316(A)(2).

5. With respect to the determinations made above, the Director of the Department has the authority to suspend, revoke or refuse to renew Respondents' insurance licenses or order Respondents to pay civil penalties pursuant to A.R.S. §20-316.

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RECOMMENDED ORDER

Based on the above, the Administrative Law Judge recommends that the Director of the Department revoke all insurance licenses the Department issued to Eugene Walter Camara and CBIA, Inc.

Done this day, September 23, 1997.

Lewis D. Kowal

LEWIS D. KOWAL
Administrative Law Judge

Original transmitted by mail this
23 day of September, 1997, to:

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By Chris Crawford Thomson