STATE OF ARIZONA
FILED

MAR 9 1998

DEPT. OF INSURANCE
BY ED

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STATE OF ARIZONA

DEPARTMENT OF INSURANCE

In the Matter of: **EDWARD T. BAEZA d.b.a. ARIZONA INSURANCE PROFESSIONALS AGENCY,** Respondent.	No. 98A-011-INS **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

On January 30, 1998, the Arizona Department of Insurance (the "Department") issued a Notice of Hearing ("Notice") in this matter, a copy of which is attached and incorporated herein by this reference. The Notice required Edward T. Baeza d.b.a. Arizona Insurance Professionals Agency ("Respondent") to provide written answers to the allegations set forth in the Notice within twenty days of the issuance of the Notice. As of this date, Respondent has failed to file an answer. On March 3, 1998, counsel for the Department filed a Request for Default and proposed Findings of Fact, Conclusions of Law and Order. As of this date, Respondent has not responded to the Department's request. Pursuant to A.A.C. R20-6-106(D), a party that fails to file an answer within the time provided shall be deemed to be in default and one or more of the allegations in the Notice of Hearing may be deemed to be admitted.

FINDINGS OF FACT

1. Notice was proper.

2. Edward T. Baeza d.b.a. Arizona Insurance Professionals Agency is in default.

3. The allegations in the Notice of Hearing are deemed admitted.

CONCLUSIONS OF LAW

1. The conduct alleged in the Notice constitutes grounds for the Director to suspend, revoke or refuse to renew Mr. Baeza's license to transact insurance in Arizona, within the meaning of A.R.S. § 20-316(A).

2. The conduct alleged in the Notice constitutes grounds for the Director to impose a civil penalty pursuant to A.R.S. § 20-316(C).

3. The conduct alleged in the notice constitutes grounds for the Director to order restitution, pursuant to A.R.S. § 20-316(C).

ORDER

IT IS ORDERED:

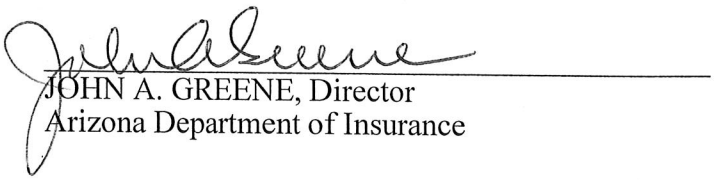
1. All insurance licenses held by Edward T. Baeza are revoked effective upon the issuance of this Order.

2. Respondent shall make restitution to Arizona Premium Finance Company in the amount of ten-thousand-five-hundred-fifty-two dollars ($10,552).

3. Respondent shall pay a civil penalty in the amount of $1,050.00 to the Director payable upon entry of this Order for remission to the State Treasurer for deposit in the State General Fund.

4. The hearing set for March 11, 1998, shall be vacated.

DATED this 9 day of March, 1998.



JOHN A. GREENE, Director
Arizona Department of Insurance

COPY of the foregoing mailed this
9th day of March, 1998, to:

The Honorable Lewis D. Kowal
Administrative Law Judge
Office of Administrative Hearings
1700 West Washington, Suite 602
Phoenix, Arizona 85007

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Leader National Insurance Company
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Foremost Insurance Company of Grand Rapids, Michigan
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Grand Rapids, Michigan 49501

Esther Davis

Consumer Protection
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BY

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

In the of: **EDWARD T. BAEZA dba ARIZONA INSURANCE PROFESSIONALS AGENCY** Respondent.	Docket No. 98A-011-INS **NOTICE OF HEARING**

PLEASE TAKE NOTICE, that pursuant to the provisions of Arizona Revised Statutes ("A.R.S.") §§20-165 and 41-1061 through and including 41-1066 and 41-1092.01, the above-captioned matter will be heard before the Director of Insurance of the State of Arizona (the "Director"), or his duly designated representative, on the 11th day of March, 1998, at nine o'clock a.m., at the Office of Administrative Hearings, 1700 West Washington, Capitol Tower, West Wing, Suite 602, Phoenix, Arizona (the "Hearing").

Motions to continue this matter shall be made in writing to the Administrative Law Judge not less than five (5) business days prior to the date set for the Hearing. A copy of any motion to continue shall be mailed or hand-delivered to the opposing party on the same date of filing with the Office of Administrative Hearings.

A.R.S. §20-164 entitles any person affected by this Hearing to appear in person and by counsel, to be present during the giving of all evidence, to have a reasonable opportunity to inspect all documentary evidence, to examine witnesses, to present supporting evidence, and to have subpoenas issued by the Administrative Law Judge to compel attendance of witnesses and production of evidence.

If Respondent is represented by counsel, the attorney shall be licensed to practice law in the State of Arizona or, if Respondent is an insurer, it may be represented by a corporate officer, pursuant to A.R.S. §20-161(B).

Pursuant to A.R.S. §41-1092.07(D), a clear and accurate record of the proceedings will be made by a court reporter or by electronic means. Any party that requests a transcript of the proceedings shall pay the cost of the transcript to the court reporter or other transcriber.

Questions concerning issues raised in this Notice of Hearing should be directed to Assistant Attorney General Shelby L. Cuevas (602) 542-7725, 1275 West Washington, Phoenix, Arizona 85007.

NOTICE OF APPLICABLE RULES

On January 23, 1992, the Arizona Department of Insurance adopted A.A.C. R20-6-101 through R20-6-115, setting forth the rules of practice and procedure applicable in contested cases before the Director of Insurance. The hearing will be conducted pursuant to those rules.

PURSUANT TO A.A.C. R20-6-106, RESPONDENT SHALL FILE A WRITTEN ANSWER WITH THE OFFICE OF ADMINISTRATIVE HEARINGS WITHIN TWENTY (20) DAYS AFTER ISSUANCE OF THIS NOTICE OF HEARING AND SHALL MAIL OR DELIVER A COPY OF THE ANSWER TO THE ASSISTANT ATTORNEY GENERAL DESIGNATED ABOVE. THE ANSWER SHALL STATE RESPONDENT'S POSITION OR DEFENSE AND SHALL SPECIFICALLY ADMIT OR DENY EACH ASSERTION IN THE NOTICE OF HEARING. ANY ASSERTION NOT DENIED SHALL BE DEEMED TO BE ADMITTED. ANY DEFENSE NOT RAISED IN THE ANSWER SHALL BE DEEMED WAIVED. IF AN ANSWER IS NOT TIMELY FILED, THE RESPONDENT SHALL BE DEEMED IN DEFAULT AND THE DIRECTOR MAY DEEM THE ALLEGATIONS ARE TRUE AND TAKE WHATEVER ACTION IS APPROPRIATE, INCLUDING SUSPENSION,

REVOCATION, DENIAL OF A LICENSE, RENEWAL OF A LICENSE, IMPOSITION OF A CIVIL PENALTY AND/OR RESTITUTION TO ANY PARTY INJURED.

PERSONS WITH DISABILITIES MAY REQUEST REASONABLE ACCOMMODATIONS SUCH AS INTERPRETERS, ALTERNATIVE FORMATS, OR ASSISTANCE WITH PHYSICAL ACCESSIBILITY, BY CONTACTING THE OFFICE OF ADMINISTRATIVE HEARINGS AT (602) 542-9825. REQUESTS SHOULD BE MADE AS EARLY AS POSSIBLE TO ALLOW TIME TO ARRANGE THE ACCOMMODATION.

The Department alleges as follows:

1. Respondent is, and was at all material times, licensed in Arizona to transact property and casualty insurance business as an agent and broker, Arizona license number 3105, which licenses expire January 31, 1998.

2. Between October 4, 1996, and November 15, 1996, Respondent sold 62 automobile insurance policies financed by Arizona Premium Finance Company, Inc. ("APFC"). These transactions are governed by the APFC "Instructions and Rate Book" provided to Respondent.

3. Respondent's transactions with APFC typically occurred as follows: Respondent collected a down payment from the insured, generally equaling 20% of the total premium, and APFC agreed to finance the balance. Respondent then issued its funding draft as payment to the insurance company. If Respondent issued the funding draft for more than the amount of premium financed, Respondent had to remit to APFC the down payment collected or the difference between the draft amount and the amount financed.

4. Respondent's practice was to write the funding draft for the full amount of the premium. Respondent was then obligated to remit to APFC the amount of the down payment collected from the insured, as indicated on the premium finance agreement.

5. On October 10, 1996, Respondent issued to APFC check number 1299 in the amount of $1406.00. On November 25, 1996, Respondent issued to APFC check number 1391 in the amount of $9146.00. The checks represented Respondent's required down payment remittance to APFC. Both checks were drawn on the Arizona Insurance Professionals account. The name Scott Toney also appears as an accountholder on the checks. Mr. Toney is Respondent's business partner and is not a licensed insurance agent.

6. Respondent's two checks totaling $10,552.00 were both returned by Bank of America as unpaid due to insufficient funds. APFC made numerous demands upon Respondent for payment and Respondent has not yet remitted the money collected from the insureds.

7. APFC sought and obtained a judgment against Respondent and Mr. Toney in Northeast Phoenix Justice Court on the $1406.00 returned check. On June 13, 1997, the court entered judgment in the amount of $2812.00, plus $39.50 in fees, costs and accruing costs. APFC has been unable to collect its judgment.

8. Respondent's conduct alleged above constitutes the willful violation of or noncompliance with any provision of Title 20, within the meaning of A.R.S. §20-316(A)(2).

9. Respondent's conduct alleged above constitutes misappropriation or conversion to his own use or illegal withholding of monies belonging to insurers and others and received in or during the conduct of business under the license or through its use within the meaning of A.R.S. §20-316(A)(4).

10. Respondent's conduct alleged above constitutes a conduct of affairs under the license showing the licensee 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).

11. Respondent's conduct alleged above constitutes fraud by diverting, or attempting or conspiring to divert the monies of an insurer in connection with the transaction of insurance within the meaning of A.R.S. §20-463(A)(4)(a) and (b).

12. Grounds exist for the Director to suspend, revoke, or refuse to renew Respondent's insurance licenses, impose a civil penalty upon Respondent, and/or order restitution, pursuant to A.R.S. §§20-316(A), 20-316(C).

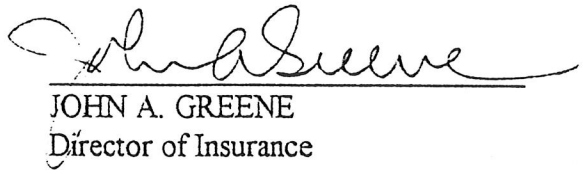
WHEREFORE, if after hearing, the Director makes a finding of one or more of the above-described allegations the Director may suspend, revoke or refuse to renew Respondent's insurance license, impose a civil penalty and order restitution, pursuant to A.R.S. §§20-316(A) and 20-316(C).

Pursuant to A.R.S. §20-150, the Director of Insurance delegates the authority vested in the Director of Insurance of the State of Arizona, whether implied or expressed, to the Director of the Office of Administrative Hearings or his designee to preside over the hearing of this matter as the Administrative Law Judge, to make written recommendations to the Director of Insurance consisting of proposed findings of fact, proposed conclusions of law, and a proposed order. This delegations does not include a delegation of the authority of the Director of Insurance to make the order on hearing or other final decision in this matter.

Pursuant to A.R.S. §41-1092.01, your hearing will be conducted through the Office of

Administrative Hearings, an independent agency. Please find enclosed a copy of the procedures to be followed.

DATED this 29 day of January, 1998.



JOHN A. GREENE
Director of Insurance

Copies of the foregoing mailed
this 30th day of January, 1998, to:

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