STATE OF ARIZONA
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DEPT. OF INSURANCE
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STATE OF ARIZONA

DEPARTMENT OF INSURANCE

In the Matter of: FRANCO CASTANEDA dba INSURE IT! Respondent.	)))))))	Docket No. 98A-044-INS **ORDER**

On July 13, 1998, 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. 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. All insurance licenses issued by the Department to Franco Castaneda are 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 16 of July, 1998

John A. Greene
Director of Insurance

A copy of the foregoing mailed
this 16 day of July, 1998

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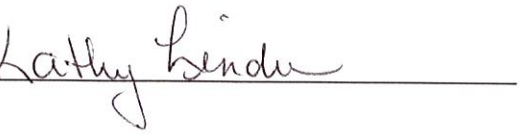

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:	No. 98A-044-INS
FRANCO CASTANEDA dba INSURE IT!, Respondent.	**RECOMMENDED DECISION OF ADMINISTRATIVE LAW JUDGE**

HEARING: June 23, 1998

APPEARANCES: Assistant Attorney General Michael J. De La Cruz on behalf of the Arizona Department of Insurance; Franco Castaneda on his own behalf

ADMINISTRATIVE LAW JUDGE: Lewis D. Kowal

FINDINGS OF FACT

1. Franco Castaneda ("Mr. Castaneda") doing business as Insure It! is currently, and, at all material times, was licensed by the Arizona Department of Insurance ("the Department") as a life and disability and property and casualty agent.

2. On May 28, 1996, Mr. Castaneda filed an application for renewal of his property and casualty agent license (the "1996 Renewal Application"). Section II of the 1996 Renewal Application asks the applicant to "List the **EXACT, FULL NAMES** of all Arizona-admitted insurance companies (carriers) you are authorized to represent for the license being renewed...."

3. In response to Section II on the 1996 Renewal Application, Mr. Castaneda listed Safeway, Atlanta Casualty, Progressive, Coronet, National Ins. Company, and N.T.A.

4. The evidence of record established that Mr. Castaneda was never authorized to represent Safeway Insurance Company ("Safeway"), The Atlanta Casualty Companies ("Atlanta Casualty"), Progressive Insurance Companies ("Progressive"), Coronet, or National Insurance Association/GRE Insurance Group ("National Ins. Company"). The Department could not locate an insurance company doing business under the name N.T.A.

5. Mr. Castaneda testified that during the relevant time period, Berglund

Insurance Agency ("Berglund") had producer agreements with the insurance companies that Mr. Castaneda listed in the 1996 Renewal Application.

6. During the hearing, Mr. Castaneda contended that the language set forth in Section II was unclear; that he attempted to submit the 1996 Renewal Application to the Department with Section II left blank and that a Department representative would not accept that application without having that section completed. Mr. Castaneda further contended that because Berglund was authorized to represent certain insurance companies that he, as a licensed agent employed by Berglund, was authorized to represent those companies. Mr. Castaneda credibly testified that other agents employed by Berglund other than himself sold insurance policies with those companies under Berglund's producer agreements. However, the evidence established that as of the date of submission of the 1996 Renewal Application to the Department, Mr. Castaneda was not employed by Berglund. Even Mr. Castaneda represented in the 1996 Renewal Application that he was self-employed as of May 28, 1996.

7. On May 14, 1997, Mr. Castaneda filed an application for renewal of his life and disability agent's license (the "1997 Renewal Application") with the Department. Section II of the 1997 Renewal Application asks the applicant to "List the **EXACT,FULL NAMES** of all Arizona-admitted insurance companies (carriers) you are authorized to represent subject to issuance of the license for which you are applying...."

8. In response to Section II of the 1997 Renewal Application, Mr. Castaneda listed Progressive Casualty, Kemper Mutual, Travelers Ins. Comp., and Jackson Life.

9. The evidence of record established that Mr. Castaneda was never authorized to represent Progressive Insurance Companies ("Progressive Casualty"), Zurich Kemper Life ("Kemper Mutual"), or Travelers Insurance Company ("Travelers Ins. Company"). Although Mr. Castaneda had been at one time authorized to represent Jackson Life while he was licensed as an insurance agent in Illinois, that representation terminated prior to the submission of the 1997 Renewal Application to the Department. As of May 14, 1997, Mr. Castaneda was not authorized to represent Jackson Life.

10. Section I(F) of the 1997 Renewal Application asks the applicant to "write the name of the business from which you will be transacting insurance." In response to that section of the 1997 Renewal Application, Mr. Castaneda listed Berglund.

11. Mr. Castaneda was employed by Berglund from February 15, 1995, to October 15, 1995. In July, 1997, Berglund rehired Mr. Castaneda for a period of approximately two months. The evidence showed that as of the date when the 1997

Renewal Application was submitted to the Department, Mr. Castaneda was not an employee of Berglund.

12. Upon leaving Berglund in October, 1995, Mr. Castaneda owned and operated a restaurant with his wife, Diana Castaneda. Mr. Castaneda contended that from October 15, 1995 through July, 1997, he had a verbal agreement with Brian Berglund of Berglund which allowed him to write insurance business for Berglund. Therefore, Mr. Castaneda asserted that with respect to the 1997 Renewal Application, by virtue of the above-mentioned verbal agreement, Mr. Castaneda had an ongoing business relationship with Berglund and could sell insurance policies through Berglund with insurance companies with which Berglund had producer agreements.

13. It is uncontroverted that during Mr. Castaneda's tenure in the restaurant industry, he did not write any insurance business. Further, there is no credible evidence to corroborate the testimony of Mr. Castaneda concerning the verbal agreement, while there is credible evidence to the contrary. Under the circumstances, it is determined that there was no such verbal agreement, and thus, Mr. Castaneda could not be considered as an employee of Berglund from October 15, 1995 through June,1997.

14. The evidence is uncontroverted that, while Mr. Castaneda attempted to obtain producer agreements with Progressive Insurance Companies, Kemper Mutual, Travelers Ins. Company and Jackson National Life Insurance Company, as of May 14, 1997, none of those insurance companies authorized Mr. Castaneda to represent them.

15. In mitigation, Mr. Castaneda testified that he relied on his experience in completing insurance applications in the State of Illinois, which he conceded was different than the Arizona application. Mr. Castaneda contended that the reason why the above-mentioned renewal applications were completed in the manner in which they were was based on a lack of understanding as to what information the renewal applications were requesting and reliance on certain information allegedly provided by a Department employee. Those contentions were not supported by credible evidence.

CONCLUSIONS OF LAW

1. Mr. Castaneda's conduct as set forth above constitutes a willful misrepresentation of any fact required to be disclosed in any agent application or accompanying statement within the meaning of A.R.S. §20-291(G).

2. Mr. Castaneda's conduct as set forth above, constitutes a willfull violation of, or noncompliance with, any provision of A.R.S., Title 20, within the meaning of A.R.S. §20-316(A)(2).

3. Mr. Castaneda's conduct as set forth above, constitutes a misrepresentation or fraud in obtaining or attempting to obtain any insurance license, within the meaning of A.R.S. §20-316(A)(3).

4. Based on the above, grounds exist for the Director of the Department ("the Director") to suspend, revoke, refuse to renew, or ask Mr. Castaneda to surrender his insurance license, or impose a civil penalty, pursuant to A.R.S. §§20-316(A) and 20-316(C).

RECOMMENDED ORDER

It is recommended that the Director revoke all insurance licenses the Department issued to Franco Castaneda doing business as Insure It!.

Done this day, July 13, 1998.

Lewis D. Kowal

LEWIS D. KOWAL
Administrative Law Judge

Original transmitted by ~~mail~~ fax this 13 day of July, 1998, to:

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By Chris Crawford Thomson