STATE OF ARIZONA
FILED

JUN 26 1998

DEPT. OF INSURANCE
BY Kath

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

In the Matter of:	)	Docket No. 98A-046-INS
	)	
BARRY CARTER,	)	**ORDER**
	)	
Respondent.	)	
	)	

On June 22, 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. The application for an individual life insurance agent license submitted by Barry Carter to the Arizona Department of Insurance is denied.

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 26 of June, 1998

John A. Greene
Director of Insurance

A copy of the foregoing mailed
this 26 day of June, 1998

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

Office of Administrative Hearings
1700 W. Washington, Suite 602
Phoenix, AZ 85007

Roger T. Martindale
Assistant Attorney General
1275 W. Washington, Room 259
Phoenix, AZ 85007

Barry Carter
9426 E. Jenan Drive
Scottsdale, AZ 85260

Kathy Lindsey

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:	No. 98A-046-INS
BARRY CARTER,	**RECOMMENDED DECISION OF ADMINISTRATIVE LAW JUDGE**
Respondent.	

HEARING: June 5, 1998

APPEARANCES: Barry Carter on his own behalf; Assistant Attorney General Roger Martindale on behalf of the Arizona Department of Insurance

ADMINISTRATIVE LAW JUDGE: Lewis D. Kowal

---

1. On March 26, 1998, Barry Carter ("Mr. Carter") submitted an application for an individual life insurance agent license (the "Application") to the Arizona Department of Insurance (the "Department").

2. In the Application, Mr. Carter disclosed that on March 31, 1995, Judgment was entered against him in Terrence J. Walsh v. Barry Carter, Maricopa County Superior No. CV 93-20265. In that Judgment, the Court found that Mr. Carter treated the corporate funds of the Arizona Workers Assessment and Recovery Centers, Inc. ("AWARE") as his own; those funds were used to pay unauthorized expenses; that Mr. Carter made fraudulent representations to the Plaintiffs in order to induce them to loan money to AWARE and fraudulently failed to disclose material facts to Plaintiffs. The Court determined that AWARE was the alter ego of Mr. Carter and that Mr. Carter be held personally responsible for AWARE's indebtedness to Plaintiffs.

3. In the above-mentioned civil proceeding, the Court awarded judgment to Plaintiffs and against Mr. and Mrs. Carter in the amount of $27,500.00 plus interest at the rate of 10% per annum from April 7, 1992 until paid; and in the principal amount of $44,000.00 plus interest at the rate of 10% per annum from April 16, 1992 until paid, for taxable costs in the amount of $367.50; and for attorney's fees in the amount of $10,000.00.

4. On April 3, 1998, the Department denied the Application pursuant to A..R.S. §20-290(B)(2).

5. On April 8, 1998, Mr. Carter timely filed a request for hearing on the denial of the Applications.

6. During the hearing, Mr. Carter explained the circumstances surrounding the activities which gave rise to the above-mentioned judgment.

7. During the hearing, Mr. Carter expressed remorse over his involvement and maintained that he did not exercise appropriate supervision over AWARE's activities.

8. Mr. Carter's background prior to his involvement with AWARE shows him to be interested in the community with respect to sports. Mr. Carter acted as a volunteer coach for Arizona State University's ("ASU") rugby team ,as an assistant coach for ASU's women's rugby team, and was involved in organizing Formula 1 racing in Europe.

9. Since his involvement in AWARE, Mr. Carter has worked as a consultant in sales and marketing for several companies dealing with health foods and sports nutrition.

10. Mr. Carter does not have any criminal history and no criminal charges were brought against him as a result of the activities that formed the basis of the above-mentioned civil proceeding.

11. Mr. Carter submitted letters of character authored by individuals who did not appear in person at the hearing and were unable to be cross-examined by the Department. Under the circumstances, the letters of character were given little weight. Other than Mr. Carter's testimony and the letters of character, there was no credible evidence presented to establish that Mr. Carter has the requisite qualifications to be issued an insurance agent license.

CONCLUSIONS OF LAW

1. Based on the above Findings of Fact, Mr. Carter has a record of dishonesty in business or financial matters, within the meaning of A.R.S. §20-290(B)(2).

2. Based on the above Findings of Fact, Mr. Carter has a record of misappropriation, conversion or irregular withholding of monies belonging to policyholders, insurers, beneficiaries or others received in the conduct of business in this state or elsewhere, within the meaning of A.R.S. §20-290 (B)(3).

3. The Director has discretionary authority pursuant to A.R.S. §§20-290 (B)(2) and (B)(3) to deny the Application.

4. Mr. Carter failed to establish by a preponderance of the evidence that the Department's denial of the Application should be reversed.

RECOMMENDED ORDER

Based on the above, the Administrative Law Judge recommends that the Director deny the application for an individual life insurance agent license that Barry Carter submitted to the Arizona Department of Insurance on March 26, 1998.

Done this day, June 22, 1998.

LEWIS D. KOWAL
Administrative Law Judge

Original transmitted by mail this 23 day of June, 1998, to:

Mr. John A. Greene, Director
Department of Insurance
Attn: Curvey Burton
2910 North 44th Street, Ste. 210
Phoenix, AZ 85018

By Chris Crawford Thomison