STATE OF ARIZONA
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DEPT. OF INSURANCE
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STATE OF ARIZONA

DEPARTMENT OF INSURANCE

In the Matter of:	)	Docket No. 98A-048-INS
	)	
BARTON FLOYD BAKER,	)	**ORDER**
	)	
Respondent.	)	
	)	

On July 21, 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 Barton Floyd Baker are revoked.

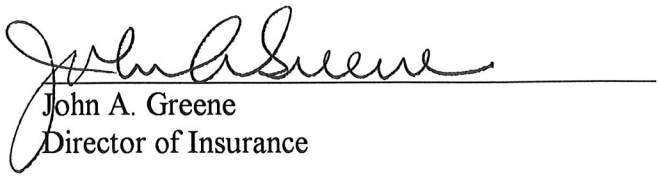
NOTIFICATION OF RIGHTS

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 24 of July, 1998



John A. Greene
Director of Insurance

A copy of the foregoing mailed
this 24 day of July, 1998

Charles R. Cohen, Deputy Director
Gregory Y. Harris, Executive Assistant Director
John Gagne, Assistant Director
Catherine O'Neil, Assistant Director
Cheryl Cluen, Investigator
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

Michael J. De La Cruz
Assistant Attorney General
1275 W. Washington, Suite 602
Phoenix, AZ 85007

Barton Floyd Baker
7287 E. Valley View Road
Scottsdale, AZ 85250

Merton E. Marks, Esq.
Lewis & Roca, LLP
40 N. Central Avenue
Phoenix, AZ 85004

American International Insurance Company
505 Carr Road
Wilmington, Delaware 19809

American International South Insurance Company
160 Water Street, 23rd Floor
New York, NY 10038

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IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:	No. 98A-048-INS
BARTON FLOYD BAKER, Respondent.	**RECOMMENDED DECISION OF ADMINISTRATIVE LAW JUDGE**

HEARING: July 10, 1998

APPEARANCES: Assistant Attorney General Michael J. De La Cruz on behalf of the Arizona Department of Insurance; Merton E. Marks, Esq. on behalf of the Respondent

ADMINISTRATIVE LAW JUDGE: Lewis D. Kowal

FINDINGS OF FACT

1. Barton Floyd Baker ("Mr. Baker") is currently, and at all times material to this matter, was licensed as an insurance adjuster and as a property and casualty insurance agent and broker in the State of Arizona.

2. The insurance licenses issued by the Arizona Department of Insurance ("Department") to Mr. Baker were due to expire on April 30, 1998. Prior to that date, the Department commenced disciplinary proceedings against Mr. Baker through issuance of a Notice of Hearing initiating this matter before the Office of Administrative Hearings.

3. On September 4, 1996, a Criminal Complaint was filed in Maricopa County Superior Court, Case No CR96-09120 ("Case No. CR96-09120'), State of Arizona V. Barton F. Baker, charging Mr. Baker with two counts of Theft, Class 5 Felonies, in violation of A.R.S. §13-1802.

4. The Criminal Complaint in Case No. CR96-09120 was based on allegations that in February, 1995, Mr. Baker knowingly obtained, by means of material misrepresentation with the intent to deprive from an insurer, unwarranted compensation from an insurer in the amounts of $1,633.00 and $1,881.00 by submitting false and inflated bills for insurance adjusting services.

5. On September 4, 1996, Mr. Baker entered into a plea agreement in Case No. CR96-09120, wherein he pleaded guilty to two counts of Theft, Class 5 Felonies, in violation of A.R.S. §§13-1802, 13-1801, 13-701, 13-702, 13-702.01, 13-801 and 13-804.

6. On October 15, 1996, the Maricopa County Superior Court entered Judgment in Case No. CR96-09120, convicting Mr. Baker of two counts of Theft, Class 5 Felonies, in violation of A.R.S. §§ 13-1802, 13-1801, 13-701, 13-702, 13-702.01, 13-801 and 13-804. The Court placed Mr. Baker on probation for a period of 3 years, ordered him to pay restitution in the amount of $8,329.50 and pay a fine in the amount of $25,000.00.

7. Mr. Baker paid the above-mentioned restitution and fine on October 15, 1996.

8. Prior to the above-mentioned activities underlying Case No. CR96-009120, Mr. Baker had an unblemished career in the insurance industry. From 1964 through 1977, he was a trainee insurance agent for Commercial Union in Seattle, Washington. In 1997, Mr. Baker was transferred to Phoenix, Arizona where he became a Claims Manager. In 1980, he was promoted to the position of National Accounts Regional Manager in Atlanta, Georgia. Mr. Baker left that position in 1981 to work for Ghay and Taylor, an independent insurance agency. In 1982, Mr. Baker purchased files from that agency and went into the insurance adjusting business under the name Baker, Livermore & Quinn whose name was subsequently changed to be Baker Risk Services upon Mr. Baker purchasing the business interests of Mr. Quinn. Aside from insurance adjusting services, Baker Risk Services also acts as a third party workers' compensation administrator.

9. Mr. Baker does not have any criminal history other than the above-mentioned felony convictions.

10. During the hearing, Mr. Baker testified as to the general circumstances that gave rise to Case No. CR96-009120. Although Mr. Baker would have this tribunal believe that other individuals employed by Baker Risk Services were responsible for the series of events underlying the above-mentioned criminal action, this tribunal is bound by the Plea Agreement Mr. Baker entered into in that case wherein he admitted to the criminal activity. The Plea Agreement is binding even if, as Mr. Baker asserts, there was compelling personal and financial considerations as to why he entered into the Plea Agreement.

11. It is interesting to note that during the hearing, Mr. Baker did not accept full responsibility for the criminal activity underlying Case No. CR96-009120 and did not express remorse over what had occurred.

12. While the evidence established that Mr. Baker has performed in excess of the four hundred hours of community service required of him in Case No. CR96-09120, Mr. Baker is still on probation until October, 1999.

13. Letters submitted by Mr. Baker to establish his good character were given little weight for the reason that the individuals who authored those letters did not appear at the hearing and were not subject to questioning by the Department as well as the Administrative Law Judge.

14. During the hearing, Mr. Baker's counsel reargued the Motion to Dismiss on the grounds that Mr. Baker's licenses had expired and not been renewed. The Department asserted that due to the filing of the instant disciplinary action, Mr. Baker's licenses had not expired and that the Department continued to have jurisdiction after April 30, 1998, and relied on A.R.S. §20-316.01 for asserting jurisdiction in this matter. The Administrative Law Judge denied the Motion and held to the ruling previously made on that motion in an Order dated June 25, 1998.

CONCLUSIONS OF LAW

1. Based on the above Findings of Fact, Mr. Baker has a record of dishonesty in business or financial matters in violation of A.R.S. § 20-316 (A) (1) together with A.R.S. § 20-290 (B) (2).

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

3. Mr. Baker's conduct, as set forth above, constitutes the misappropriation or conversion to his own use or illegal withholding of monies belonging to policyholders, insurers or others and received in or during the conduct of business under his insurance license or through its use, in violation of A.R.S. § 20-316(A) (4).

4. Mr. Baker has a record of conviction by final judgment of a felony involving moral turpitude, in violation of A.R.S. § 20-316(A) (6).

5. Mr. Baker's conduct, as set forth above, constitutes a conduct of affairs under his insurance license showing him to be incompetent or a source of injury and loss to, or repeated complaint by, the public or any insurer, within the meaning of A.R.S. § 20-316 (A) (7).

6. Mr. Baker's conduct, as set forth above, constitutes an act of fraud in that he knowingly and with intent to defraud, diverted or attempted or conspired 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).

7. Based on the above, grounds exist for the Director of the Department ("Director") to suspend, revoke or refuse to renew Mr. Baker's insurance licenses, impose a civil penalty upon Mr. Baker, and/or order restitution, pursuant to A.R.S. §§ 20-316 (A) and 20-316(C).

RECOMMENDED ORDER

It is recommended that the Director revoke all insurance licenses issued by the Department to Barton Floyd Baker.

Done this day, July 21, 1998.

Lewis D. Kowal

LEWIS D. KOWAL
Administrative Law Judge

Original transmitted by mail this
21 day of July, 1998, to:

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

By Chris Crawford Thomeson