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STATE OF ARIZONA

DEPARTMENT OF INSURANCE

DEPARTMENT OF INSURANCE
By *CC*

In the Matter of)	Docket No. 7730
)	
FRANK CHARLES CARBREY and)	ORDER
ARLYNN MARIE CARBREY,)	
)	
Respondents.)	
_____)	

On December 3, 1992 a hearing was held in the above-referenced matter. Respondents were present and appeared without counsel. The Arizona Department of Insurance ("Department") was represented by Kathryn Leonard, Assistant Attorney General.

Based upon the evidence and arguments presented at the hearing, we find as follows:

FINDINGS OF FACT

1. Notice of this hearing was mailed to Respondents at their last address of record.
2. Frank Charles Carbrey ("Mr. Carbrey") is and was at all material times licensed as a life, disability and variable annuity insurance agent in this state (no. 0701652).
3. Arlynn Marie Carbrey ("Mrs. Carbrey") is and was at all material times licensed as a life, disability and variable annuity insurance agent in this state (no. 0711615).
4. On May 13, 1992, the Director issued the original Notice of Hearing in this matter setting a hearing date of August 25, 1992.
5. On June 22, 1992, the Director received a Request for Default in this matter pursuant to A.A.C. R4-14-106(D).

1 6. On June 25, 1992, the Director issued an Order in
2 this matter finding Respondents to be in default, deeming the
3 allegations of the Notice of Hearing admitted, and revoking
4 Respondents' insurance licenses.

5 7. On August 18, 1992, the Director received
6 Respondents' request for reconsideration of the Order revoking
7 their insurance licenses.

8 8. On August 24, 1992, the Director issued an Order
9 denying Respondents' request for reconsideration.

10 9. Respondents subsequently commenced cause no.
11 CV92-17105 in the Maricopa County Superior Court appealing from
12 the Director's Orders revoking their insurance licenses.

13 10. By Stipulation dated November 12, 1992, the
14 parties stipulated that the appeal would be dismissed with
15 prejudice, a hearing of the matter would be held at the
16 Department of Insurance, and that the order on hearing shall be
17 final and nonappealable.

18 11. On or about November 23, 1987, Mr. Carbrey
19 entered into an agreement with Beneficial Standard Life
20 Insurance Company ("Beneficial Standard") pursuant to which Mr.
21 Carbrey was authorized to solicit applications for insurance on
22 behalf of Beneficial Standard in all states and jurisdictions
23 where Beneficial Standard and Mr. Carbrey are both duly
24 licensed. Said agreement provides that Mr. Carbrey will be
25 compensated by the payment of commissions according to a
26 schedule attached to the agreement. Said schedule includes
27 commissions to be paid relative to policy form 1-470. Said
28 agreement further provides:

1 a. Mr. Carbrey shall not deduct or retain
2 commissions but shall pay over promptly to Beneficial Standard
3 all gross premiums received;

4 b. Mr. Carbrey has not earned any commission until
5 the premium due date has occurred, the policy has been
6 delivered, and the gross premium has been received by Beneficial
7 Standard;

8 c. Mr. Carbrey is authorized to collect premium on
9 behalf of Beneficial Standard, but has no authority to endorse
10 or negotiate any check draft or other instrument made payable to
11 Beneficial Standard;

12 d. Mr. Carbrey shall promptly remit all premiums
13 collected to Beneficial Standard;

14 e. All premiums received by Mr. Carbrey on behalf of
15 Beneficial Standard shall be deemed to have been received in a
16 fiduciary capacity and shall be held in trust for Beneficial
17 Standard and shall not be commingled with other money or used
18 for any personal or other purpose.

19 12. Frances W. Trueblood ("Mrs. Trueblood") is and
20 was at all material times a resident of the state of Washington.

21 13. On March 22, 1988, Mr. Carbrey took an
22 application from Mrs. Trueblood for a policy of life insurance
23 from Beneficial Standard in the face amount of \$25,000. The
24 application indicates an annual premium of \$990 with an
25 additional "drop-in" amount for the first year.

26 14. Mrs. Trueblood's application to Beneficial
27 Standard was approved on or about May 11, 1988.

28

1 15. Beneficial Standard issued "Policy Delivery
2 Instructions" dated May 16, 1988 to Mr. Carbrey enclosing policy
3 no. 183012408 to Mrs. Trueblood and instructing that the policy
4 be delivered within 45 days and that the annual premium of \$990
5 be collected on delivery. Mrs. Trueblood had not remitted
6 payment for the policy at this point and the policy was not
7 delivered to Mrs. Trueblood at this point.

8 16. By letter to Mrs. Trueblood dated July 13, 1988,
9 Beneficial Standard advised her that her application for
10 insurance was incomplete and that her file was closed.

11 17. The Paul Revere Insurance Group ("Paul Revere")
12 remitted check no. 450264 dated July 20, 1988 to Mrs. Trueblood
13 in the amount of \$2,602.55 as the net proceeds of the surrender
14 value of two (2) Paul Revere policies. The check was endorsed
15 by Mrs. Trueblood to Beneficial Standard. Between July 20, 1988
16 and August 15, 1988 Mrs. Trueblood delivered the check to Mr.
17 Carbrey. Mrs. Carbrey then endorsed the check to the order of
18 "Frank Carbrey" and on August 15, 1988 deposited it to an
19 account in the name of Mr. and Mrs. Carbrey at United Bank of
20 Arizona.

21 18. On or about September 1, 1988, check no. 1044 was
22 written and signed in the name of Mr. Carbrey against the United
23 Bank account in the amount of \$1,301 payable to Beneficial
24 Standard relative to policy no. 183012408, and delivered to
25 Beneficial Standard.

26 19. Mrs. Carbrey erroneously advised Beneficial
27 Standard that Mrs. Trueblood's annual premium on policy no.
28

1 183012408 was \$2,602 and that the \$1,301 payment represented a
2 semi-annual premium.

3 20. On or about September 2, 1988, Mrs. Carbrey
4 transmitted Beneficial Standard policy no. 183012408 in the face
5 amount of \$25,000 to Mrs. Trueblood indicating that the
6 erroneous annual premium of \$2,602 had been paid. An attached
7 Policy Schedule indicates that the policy is a \$25,000 flexible
8 premium adjustable life insurance policy (form no. 1-470) issued
9 May 15, 1988 with an annual premium of \$990.

10 21. On or about September 14, 1988, Mrs. Carbrey
11 advised Beneficial Standard that she had drawn check no. 1044 on
12 the wrong account and to return it to her marked "refer to
13 maker", and that she would send a replacement check.

14 22. Also on or about September 14, 1988, Mrs. Carbrey
15 transmitted a replacement check no. 149 to Beneficial Standard
16 in the amount of \$1,301 drawn on the account of Arlynn Carbrey
17 dba Multi Insurance Services at Pima Savings relative to policy
18 no. 183012408.

19 23. On or about October 7, 1988, the replacement
20 check was applied to Mrs. Trueblood's account with Beneficial
21 Standard.

22 24. Beneficial Standard apparently reinstated the
23 policy retroactive to May 15, 1988 based on the payment from
24 Mrs. Carbrey, but did so on the erroneous basis of a \$2,602
25 annual premium instead of the true annual premium of \$990.

26 25. By letter dated October 10, 1988, Beneficial
27 Standard advised Mrs. Trueblood that her semi-annual premium
28

1 payment of \$1,301 had been received and that her premium was
2 paid through November 15, 1988.

3 26. By statement dated October 26, 1988, Beneficial
4 Standard billed Mrs. Trueblood for semi-annual premium in the
5 amount of \$1,301 due November 15, 1988.

6 27. On or about November 4, 1988, Mrs. Carbrey
7 transmitted to Beneficial Standard check no. 232 in the amount
8 of \$1,301 drawn on the account of Arlynn Carbrey dba Multi
9 Insurance Services at Pima Savings relative to policy no.
10 183012408. Mrs. Carbrey was apparently attempting to remit the
11 balance of the \$2,602 received from Mrs. Trueblood, which she
12 erroneously believed was due as the balance of the annual
13 premium on the policy. This check was dishonored due to
14 insufficient funds.

15 28. On or about December 14, 1988, Beneficial
16 Standard reversed the premium credit from the initial \$1,301
17 paid toward Mrs. Trueblood's policy, and caused the policy to
18 lapse.

19 29. By cover letter dated December 15, 1988,
20 Beneficial Standard transmitted a refund to Mrs. Trueblood in
21 the amount of \$1,301.

22 30. On or about February 24, 1989, United Fidelity
23 Life Insurance Company ("United Fidelity"), which had apparently
24 assumed Mrs. Trueblood's account with Beneficial Standard,
25 transmitted another refund to Mrs. Trueblood in the amount of
26 \$1,301.55 as the balance of the refund of the \$2,602.55 Mrs.
27 Trueblood had remitted to Mr. Carbrey.

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1 31. By letter dated February 2, 1990, United Fidelity
2 demanded that Mr. Carbrey remit the amount of \$1,301.50 as the
3 balance of the \$2,602.50 received from Mrs. Trueblood.

4 32. By Order to Appear dated February 19, 1991, Mr.
5 Carbrey was ordered to appear at the Department on February 28,
6 1991 regarding a complaint filed by Mrs. Trueblood. Mrs.
7 Carbrey rescheduled Mr. Carbrey's appearance, but he never
8 appeared.

9 33. Mrs. Carbrey agreed to remit the amount of
10 \$3,322.29 to Mrs. Trueblood through the Department. This amount
11 represents the \$2,602.55 received from Mrs. Trueblood together
12 with interest. Mrs. Carbrey missed numerous deadlines to
13 provide the payment to the Department.

14 34. After May 15, 1991, the Department received a
15 copy of Republic Money Order no. OD-17748297 dated April 5, 1991
16 from Mr. Carbrey payable to Mrs. Trueblood in the apparent
17 amount of \$3,322.29. Mrs. Trueblood advised the Department that
18 she had not received any payment from Mr. Carbrey.

19 35. Republic Money Orders subsequently confirmed that
20 money order no. OD-17748297 was issued in the amount of \$3.29.

21 36. On or about May 22, 1992, Mrs. Carbrey sent Mrs.
22 Trueblood a cashier's check in the amount of \$1,301.28 along
23 with a typed letter for Mrs. Trueblood's signature to Sara
24 Begley of the Department relative to "Notice no. 7730". This
25 letter falsely states that Mrs. Trueblood had declined to
26 provide additional evidence of insurability which caused the
27 subject insurance policy to never be in force, and that
28 \$2,602.55 had been received by the insurer and then refunded to

1 Mrs. Trueblood. The letter further requests the Department to
2 consider the matter settled and closed. Mrs. Trueblood accepted
3 the cashier's check, but declined to execute the letter.

4 37. On July 8, 1992, the Department received a
5 handwritten note from Mrs. Carbrey enclosing a copy of the
6 unsigned letter purportedly from Mrs. Trueblood, and requesting
7 that the Department acknowledge receipt of the letter.

8 38. On July 9, 1992, the Department received a
9 facsimile transmission from Mrs. Carbrey enclosing another copy
10 of the letter from Mrs. Trueblood, this time bearing the
11 purported signature of Mrs. Trueblood. Mrs. Trueblood denies
12 having signed the letter.

13 39. Mr. and Mrs. Carbrey claim that Mr. Carbrey was
14 entitled to retain 50% of the \$2,602 received from Mrs.
15 Trueblood as his "fee" for the transaction under his NASD Series
16 7 license. However, there was no evidentiary or legal basis
17 offered in support of this claim. No evidence was offered that
18 Mr. Carbrey possesses such a license, or what such a license
19 might entitle Mr. Carbrey to do. No showing was made that the
20 subject transaction is covered by such a license. The
21 transaction on its face is covered by the November 23, 1987
22 agreement between Mr. Carbrey and Beneficial Standard, which
23 entitles Mr. Carbrey to a commission on the 1-470 policy but
24 requires him to first fully remit the gross premium. Mr.
25 Carbrey's claim of a right to a fee is contradicted by Mrs.
26 Carbrey's delivery of check no. 232 in the amount of \$1,301 to
27 Beneficial Standard in November 1988, which was subsequently
28 returned for insufficient funds. Finally, the record contains

1 no justification for basing a fee or any kind of compensation on
2 the \$2,602 received from Mrs. Trueblood, which is merely the
3 total surrender value of her Paul Revere policies.

4 40. Mr. and Mrs. Carbrey claim that they deposited
5 the \$2,602 check received from Mrs. Trueblood into their bank
6 account because they were still shopping for an insurer for
7 her. Mr. Carbrey makes the related claim that he wrote
8 applications to several companies for Mrs. Trueblood. However,
9 no evidence was presented of any application other than the
10 Beneficial Standard application. Mr. and Mrs. Carbrey's claim
11 is contradicted by the March 1988 application to Beneficial
12 Standard and the May 1988 issuance of a Beneficial Standard
13 policy. It is further contradicted by Mrs. Trueblood's
14 endorsement on the \$2,602 check.

15 41. Mrs. Carbrey claims that she did not alter the
16 copy of the money order delivered to the Department. She claims
17 she purchased money order no. OD-017748297 for another purpose
18 and does not know how it was altered to \$3,322.29. She claims a
19 woman in her office sent it to the Department, but admits it is
20 her own handwriting on the envelope. We do not find Mrs.
21 Carbrey to be credible on the matter of the money order.

22 42. We find that Mrs. Carbrey attempted to mislead
23 the Department by fabricating a \$3,322.29 money order and by
24 fabricating an exculpatory letter from Mrs. Trueblood. We find
25 that Mrs. Carbrey engaged in this conduct to conceal the fact
26 that she had improperly caused the premium and "pour-in" payment
27 from Mrs. Trueblood to be deposited into the account of Mr. and
28

1 Mrs. Carbrey and that as a result United Fidelity has sustained
2 a loss of \$1,301.55.

3 43. We find that the transaction with Mrs. Trueblood
4 occurred under the authority of Mr. Carbrey's agency agreement
5 with Beneficial Standard, that his claim of entitlement to a 50%
6 fee is improper and unwarranted, that he failed to properly
7 supervise the transaction, and that he is ultimately responsible
8 for the irregularities in the transaction. However, there is no
9 evidence of his active involvement in the attempt to mislead the
10 Department.

11 44. We find that there is no evidence that Mr.
12 Carbrey wilfully failed to comply with the Order to Appear.

13 CONCLUSIONS OF LAW

14 1. The Director has jurisdiction of this matter
15 pursuant to A.R.S. §§20-106, 20-107, 20-142 and 20-287.

16 2. Notice of this hearing was proper pursuant to
17 A.R.S. §20-163 and 41-1061.

18 3. Mr. Carbrey has misappropriated or converted to
19 his own use or illegally withheld monies belonging to
20 policyholders, insurers, beneficiaries or others and received in
21 or during the conduct of business under the license or through
22 its use, in violation of A.R.S. §20-316(A)(4).

23 4. Mr. Carbrey has a conduct of affairs under his
24 license showing him to be incompetent or a source of injury and
25 loss to, or repeated complaint by, the public or any insurer, in
26 violation of A.R.S. §20-316(A)(7).

27 5. Mrs. Carbrey has wilfully violated, or wilfully
28 failed to comply with, the provisions of A.R.S. Title 20, or the

1 lawful rules or orders of the Director, in violation of A.R.S.
2 §20-316(A)(2).

3 6. Mrs. Carbrey has misappropriated or converted to
4 her own use or illegally withheld monies belonging to
5 policyholders, insurers, beneficiaries or others and received in
6 or during the conduct of business under the license or through
7 its use, in violation of A.R.S. §20-316(A)(4).

8 7. Mrs. Carbrey has a conduct of affairs under her
9 license showing her to be incompetent or a source of injury and
10 loss to, or repeated complaint by, the public or any insurer, in
11 violation of A.R.S. §20-316(A)(7).

12 ORDER

13 NOW, THEREFORE, IT IS ORDERED:

14 1. Revoking the insurance licenses of Arlynn Marie
15 Carbrey, effective immediately;

16 2. Assessing a civil penalty against Arlynn Marie
17 Carbrey in the amount of \$2,500.00, payable within 10 days from
18 the date of this Order;

19 3. Suspending the insurance licenses of Frank
20 Charles Carbrey for six (6) months from the date of this Order,
21 effective immediately;

22 4. That Arlynn Marie Carbrey and Frank Charles
23 Carbrey, jointly and severally, shall make restitution to United
24 Fidelity Life Insurance Company in the amount of \$1,301.55,
25 payable within 10 days from the date of this Order.

26 The aggrieved party may request a rehearing with
27 respect to this Order by filing a written petition with the
28 Hearing Officer within thirty days of the date of this Order,

1 setting forth the basis for such relief pursuant to A.A.C.
2 R4-14-114(B).

3 DATED this 14th day of January, 1993.

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5 

SUSAN CALLINGER
Director of Insurance

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8 

CHARLES R. COHEN
Hearing Officer


9
10 COPY of the foregoing mailed/delivered
11 this 14th day of January, 1993 , to:

12 Kathryn Leonard, Esq.
13 Assistant Attorney General
14 1275 W. Washington
15 Phoenix, Arizona 85007

16 Joseph M. Hennelly, Jr., Deputy Director
17 Jay Rubin, Assistant Director
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29 
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