

NOV 6 1997

DEPT. OF INSURANCE
BY Kath

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

In the Matter of:)	Docket No. 97A-119-INS
)	
WILLIAM R. ANDLER,)	ORDER
)	
Petitioner.)	
)	

On October 7, 1997, 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 Director accepts findings of fact ¶¶ 1 and 2.
2. The Director rejects findings of fact ¶ 3 and replaces it with the following:

"This case is a matter of first impression in Arizona under 18 U.S.C. § 1033 and the Insurance Fraud Prevention Act of 1994."

This change is made because the absence of reported decisions construing this three year old enactment does not mean that no guidance or standards exist regarding this matter because the law itself provides both guidance and notice to Vanliner and other insurers about the consequences that flow from the employment of any individual convicted of a felony involving dishonesty or breach of trust. The Federal law clearly prohibits Vanliner and other insurers from employing any individual convicted of a felony involving fraud or dishonesty in the absence of consent given by the Director.

3. The Director rejects findings of fact ¶ 4 and replaces it with the following:

1 “Pursuant to 18 U.S.C. § 1033 and the Insurance Fraud Prevention
2 Act of 1994, Vanliner may not lawfully employ Mr. Andler or any other
3 individual convicted of a felony involving dishonesty or breach of trust in
4 the transaction of insurance in the absence of express consent from the
5 Director of Insurance of the Department of Insurance.”

6 This change is made because the federal law addresses the circumstances under which Vanliner
7 and other insurers may transact insurance in this state through individuals who have been convicted of a
8 felony involving dishonesty or breach of trust. This proceeding is a regulatory proceeding. As such, the
9 proceeding determines only the extent to which Vanliner may lawfully employ Mr. Andler in the
10 transaction of insurance. In the context of this case, the statement that “Mr. Andler’s right to
11 employment is a property right” is unnecessary *dicta* and incorrect.

12 4. The Director accepts findings of fact ¶ 5 through 8.

13 5. Findings of fact ¶ 9 is amended to read as follows:

14 “Vanliner (NAIC No. 21172) is an Arizona corporation and is
15 authorized to transact insurance in Arizona.”

16 This change is made to more clearly identify Vanliner.

17 7. The Director accepts findings of fact ¶¶ 10 through 23.

18 **CONCLUSIONS OF LAW**

19 The Director rejects the conclusions of law and replaces it with the following:

20 1. The Department has jurisdiction over this matter pursuant
21 to A.R.S. §§ 20-142 and 20-161 and 18 U.S.C. § 1033.

1 2. The Insurance Fraud Prevention Act of 1994 and 18 U.S.C.
2 § 1033 were enacted to protect the public, insurers, and policyholders from
3 the employment in the business of insurance of individuals who have been
4 convicted of felonies involving dishonesty or breach of trust. Andler's
5 convictions constitute felonies involving dishonesty or breach of trust.
6 Thus, in the absence of the Director's consent, Vanliner may not lawfully
7 employ Andler.

8 3. The application of 18 U.S.C. § 1033 to the determination of
9 whether Vanliner may employ Andler in the business of insurance does not
10 constitute an ex post facto violation of either the Arizona or United States
11 constitutions.

12 4. The Insurance Fraud Prevention Act of 1994 and 18 U.S.C.
13 § 1033 are not vague or indefinite. These laws provide sufficient notice
14 and guidance to Vanliner that it may not lawfully employ Andler in the
15 absence of the consent of the Director.

16 5. Mr. Andler has sustained his burden of establishing that his
17 continued employment with Vanliner perform the duties identified above in
18 Findings of Fact ¶¶ 16 and 17 does not pose a threat to the public, Vanliner
19 or its policyholders.

20 These change are made to the conclusions of law to clarify the authority and basis of the
21 entry of this order by the Director.

1 **ORDER**


2 Pursuant to 18 U.S.C. § 1033(e)(2), the Director of the Arizona Department of Insurance
3 consents to the employment of William R. Andler by Vanliner Insurance Company to be employed in the
4 business of insurance to perform the duties identified above in Findings of Fact ¶¶ 16 and 17 or any
5 similar duties, provided that Mr. Andler will, at all times, be subject to oversight, audit and supervision by
6 Vanliner to protect against the recurrence of the acts which led to his earlier felony conviction.

7 **NOTIFICATION OF RIGHTS**

8 The aggrieved party may request a rehearing with respect to this Order by filing a written
9 petition with the Office of Administrative Hearings within 30 days of the date of this Order, setting forth
10 the basis for such relief pursuant to A.A.C. R20-6-114(B).

11 The final decision of the Director may be appealed to the Superior Court of Maricopa
12 County for judicial review pursuant to A.R.S. § 20-166. A party filing an appeal must notify the Office of
13 Administrative Hearings of the appeal within ten days after filing the complaint commencing the appeal,
14 pursuant to A.R.S. §41-1092.10.

15 DATED this 6 day of November, 1997.

16
17 
18 John A. Greene
19 Director of Insurance

20 A copy of the foregoing mailed
21 this 6 day of November, 1997

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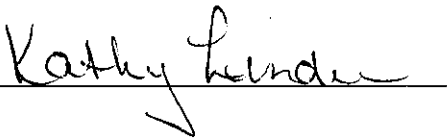
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1 Department has denied a license application while, in the instant matter, no
2 action has been taken by the Department other than to set this matter for
3 hearing. Further, but for 18 U.S.C. §1033, Mr. Andler's employment would not
4 fall within the jurisdiction of the Department and Mr. Andler's right to employment
5 is a property right while obtaining a license is a privilege rather than a property
6 right.

7 5. Under the circumstances, it is determined that Mr. Andler has the
8 burden of proving at this hearing that his continued employment with Vanliner
9 does not pose a threat to the public, Vanliner or its policyholders.

10 6. It is undisputed that in 1994, Mr. Andler pleaded guilty to 9 counts of
11 wire fraud and was placed on probation for three years, participated in a home
12 confinement program, and ordered to: make restitution in the sum of
13 \$61,918.08, pay a fine of \$10,000.00 and pay a special assessment of \$50.00 .

14 7. Mr. Andler was employed by CNA Insurance Company from 1957
15 through 1992. The evidence established that, while employed at CNA Insurance
16 Company as a senior claims examiner, Mr. Andler accepted certain gifts from a
17 law firm whose bills he approved for legal services performed on behalf of CNA.
18 Mr. Andler testified that the cost of the gifts he received from the law firm were
19 included in the billings he approved.

20 8. While still employed at CNA, Mr. Andler became aware that CNA
21 was auditing him and that he was the subject of a federal investigation. Prior to
22 being employed by Vanliner, Mr. Andler testified that he was unaware that the
23 federal investigation was still ongoing .

24 9. At all material times, Vanliner was an Arizona corporation authorized
25 to conduct the business of insurance in Arizona.

26 10. It is undisputed that Mr. Andler was hired by Vanliner prior to being
27 indicted for wire fraud which ultimately resulted in the above-mentioned criminal
28 conviction. It is also undisputed that Mr. Andler's felony conviction and
29 employment with Vanliner occurred prior to the effective date of 18 U.S.C.
30 §1033.

11 11. Upon entering a guilty plea to the 9 counts of wire fraud as set forth
12 above, Mr. Andler submitted his resignation to Vanliner which was accepted.
13 One month later, Mr. Andler requested reconsideration for employment at
14 Vanliner and was rehired.

15 12. Mr. Andler was initially hired by Vanliner as a senior claims examiner
16 for the South Eastern Region of the United States. In that capacity, after being

1 employed approximately one month, Mr. Andler had check writing authority for
2 up to \$5,000.00 and claims settlement authority for up to \$10,000.00. Upon
3 being indicted on wire fraud, Mr. Andler notified Vanliner who allowed Mr. Andler
4 to continue his employment. However, Mr. Andler's check writing authority was
5 removed and his settlement authority was reduced to \$5,000.00.

6 13. Mr. Andler's entire work experience upon graduation from college
7 has involved insurance claims. Mr. Andler has approximately 40 years of
8 experience in that field.

9 14. Wayne Barker, Director of Claims for Vanliner, and Morton Golder,
10 former president of Vanliner and currently vice-president of Unigroup, Inc., the
11 parent holding company of Vanliner, testified that Mr. Andler is a valuable
12 employee of Vanliner.

13 15. The evidence presented established that during his employment with
14 Vanliner, Mr. Andler demonstrated himself to be an exemplary employee as
15 evidenced by receiving several performance awards for his accomplishments.
16 As a result of his contribution to Vanliner, he was awarded a promotion to the
17 position of claims examiner. In that capacity, Mr. Andler was not authorized to
18 write checks or have settlement authority until he completed probation.

19 16. After Mr. Andler completed his probation, Vanliner gave him check
20 writing authority up to \$25,000.00 and settlement authority up to \$100,000.00.
21 Mr. Andler testified that for claims involving \$100,000.00 or more, those claims
22 cannot be settled by him without approval of his supervisor. As a practical
23 matter, for claims that are under \$100,000.00, Mr. Andler routinely discusses
24 "large" claims with his supervisor. For all claims that Mr. Andler settles, two
25 additional signatures of Vanliner officers are required on a settlement check.
26 One of those signature is that of Mr. Andler's supervisor.

27 17. One of Mr. Andler's current duties is to recommend approval of legal
28 bills submitted but that other employees issue final approval. However, Mr.
29 Andler has no input on the selection of the attorneys used by Vanliner.

30 18. It is uncontroverted that Mr. Andler's probation was terminated early,
that Mr. Andler paid all assessments, fines and restitution as required by the
United States District Court as a condition of sentencing on the 9 counts of wire
fraud.

19. Mr. Andler appeared remorseful at this hearing for his prior criminal
activities that led to the guilty plea of wire fraud and testified that he is

1 rehabilitated. There was no evidence presented that Mr. Andler had any prior or
2 subsequent criminal convictions.

3 20. The evidence establishes that Mr. Andler has performed well in the
4 insurance industry prior to his criminal conviction, during his probation period,
5 after his release from probation.

6 21. Messrs. Barker and Golder testified that based on Mr. Andler's job
7 performance with Vanliner as well as Mr. Andler's current duties and the policies
8 Vanliner follows, should Mr. Andler be permitted to continue his employment with
9 Vanliner, Mr. Andler does not pose a threat to the public, to Vanliner or its
10 policyholders. Vanliner has strict guidelines that prohibit employees receiving
11 gifts more than \$25.00 in value.

12 22. The testimony of Messrs. Andler, Barker and Golder, as set forth
13 above, was unrefuted and determined to be credible.

14 23. Petitioner contended that 18 U.S.C. §1033 did not pertain to him
15 because the intent of that legislation was to target complex insurance fraud
16 schemes involving interstate and international transactions and repeat white
17 collar criminal offenders. Petitioner also contended that to apply 18 U.S.C.
18 §1033 to a situation wherein his conviction and employment preceded the
19 enactment of that statute is a violation of the ex post facto provisions of the
20 Arizona and United States Constitutions. Further, Petitioner contended that
21 Petitioner's due process rights have been violated because 18 U.S.C. §1033 is
22 vague and indefinite. However, despite those legal arguments, Petitioner still
23 requests that the Director of the Department issue his consent for Petitioner to
24 continue employment with Vanliner.

25 CONCLUSIONS OF LAW

26 Mr. Andler sustained his burden of establishing that his continued
27 employment to Vanliner does not pose a threat to the public, Vanliner or its
28 policyholders. As a result of this determination, there is no need for the
29 Administrative Law Judge to address the issues raised by Petitioner concerning
30 ex post facto laws, due process or any other issue raised by Petitioner
concerning this matter.


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RECOMMENDED ORDER

Based on the above, the Administrative Law Judge recommends that the Director of the Department issue his consent pursuant to 18 U.S.C. §1033, that Mr. Andler may continue his employment with Vanliner.

Done this day, October 7, 1997.



LEWIS D. KOWAL
Administrative Law Judge

Original transmitted by mail this
7 day of October, 1997, to:

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By 
