

1 5. United States Fidelity and Guaranty Company
2 ("USF&G") is presently, and was at all material times, an
3 insurer authorized to transact business in the State of
4 Arizona.

5 6. In or about 1988, Ruiz and Southwest placed
6 insurance coverage for Desert Pacific Construction, Inc.
7 ("Desert Pacific") with USF&G. USF&G issued policy number
8 LMPO7843931701 for the period of March 26, 1988 to March 26,
9 1989. The policy was not renewed and USF&G completed an audit
10 of the policy in August 1989. The audit produced a return
11 premium of \$9,789.00.

12 7. On or about November 15, 1989, Ruiz and Southwest
13 received return premium monies from USF&G.

14 8. Ruiz failed to tender return premium to Desert
15 Pacific and converted it to his own personal use.

16 9. At the hearing, Ruiz did not dispute that he did
17 not forward the return premium to Desert Pacific. Ruiz
18 testified that Desert Pacific and The Chattel Company were both
19 wholly owned by M. Thomas Coggins. At the time of the events
20 alleged in the notice of hearing, Ruiz and Southwest were
21 leasing office space from The Chattel Company. Ruiz testified
22 that The Chattel Company had experienced financial difficulties
23 and had abandoned the building. Shortly before Ruiz received
24 the return premium, he had been notified by the lender that
25 foreclosed on the building that Ruiz would have to move. Ruiz
26 testified that he still had more than a year left on his lease
27 with The Chattel Company, and as a result of having to move his
28 office he incurred approximately \$11,000.00 in moving expenses.

1 10. Ruiz testified that he withheld the return
2 premium belonging to Desert Pacific to offset the moving
3 expenses he ultimately incurred as a result of The Chattel
4 Company's breach of Ruiz' lease.

5 11. Ruiz testified that when he withheld the return
6 premium, he believed he was legally entitled to do so. When
7 Ruiz was advised by the Department that such withholding was
8 prohibited, he did not have sufficient funds to pay the return
9 premium to Desert Pacific. Ruiz did make a partial payment to
10 Desert Pacific.

11 12. USF&G subsequently issued a check to Desert
12 Pacific in the amount of \$8,517.54.

13 13. Ruiz testified that he and Southwest experienced
14 financial difficulties and that in September 1990 the assets of
15 Southwest were sold to The Leavitt Insurance Group. Ruiz
16 testified that he still has substantial debt which he is
17 planning to repay. On October 15, 1992, Ruiz will have repaid a
18 \$130,000.00 obligation to Employers Mutual Companies. Ruiz also
19 acknowledged a \$60,000.00 debt to First National Bank of Arizona
20 and a \$70,000.00 debt to The Leavitt Insurance Group that Ruiz
21 intends to repay. Ruiz testified that he does intend to repay
22 USF&G.

23 14. We find that Ruiz has been licensed in good
24 standing in Arizona for twelve years. He testified that he now
25 knows that he should not have withheld these funds. Ruiz
26 expressed sincere remorse for his error in judgement, and we
27 find that Ruiz will not pose a threat to the public if licensed
28 as an insurance agent.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CONCLUSIONS OF LAW

1. The Director has jurisdiction in this matter pursuant to A.R.S. § 20-142.

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


3. Ruiz' conduct constitutes the misappropriation or conversion to their own use or illegal withholding of monies belonging to policyholders, insurers, beneficiaries or others and received in or during the conduct of business under the license or through its use in violation of A.R.S. § 20-316(4).

4. It is within the Director's discretion to order restitution to any party injured pursuant to A.R.S. § 20-316.

IT IS HEREBY ORDERED that Ruiz and/or Southwest Commercial Agency, Inc. shall make restitution to USF&G in the amount of \$8,517.54 on or before March 1, 1993.

The aggrieved party may request a rehearing with respect to this Order by filing a written petition with the Hearing Officer within 30 days of the date of this Order, setting forth the basis for such relief pursuant to A.A.C. R4-14-114(B).

DATED this 28th day of September, 1992.



SUSAN GALLINGER
Director of Insurance



SARA M. BEGLEY
Chief Hearing Officer

1 COPY of the foregoing mailed/delivered
2 this 28th day of September, 1992, to:

3 Kathryn Leonard, Esq.
4 Assistant Attorney General
5 Attorney General's Office
6 1275 West Washington
7 Phoenix, Arizona 85007

8 Joseph M. Hennelly, Jr., Deputy Director
9 Jay Rubin, Assistant Director
10 Maureen Catalioto, Supervisor
11 Arnold Sniegowski, Investigator
12 Department of Insurance
13 3030 North 3rd Street, Suite 1100
14 Phoenix, Arizona 85012

15 Roman E. Ruiz
16 10428 South 47th Street
17 Phoenix, Arizona 85004

18 Southwest Commercial Agency, Inc.
19 c/o Roman E. Ruiz
20 Winter-Barrett-Leavitt Insurance Agency, Inc.
21 6330-2 East Thomas Road, Suite 228
22 Scottsdale, Arizona 85251

23 Paul S. Harter, Esq.
24 PAUL S. HARTER, P.C.
25 Brookstone Building, Suite 160
26 2025 North Third Street
27 Phoenix, Arizona 85004
28 Attorney for Desert Pacific Construction

United States Fidelity & Guaranty Company
1100 East 6600 South
Post Office Box 21100
Salt Lake City, Utah 84121

American Star Insurance Company
350 California Street
San Francisco, California 94104

Unigard Insurance Company
15805 N.E. 24th Street
Bellevue, Washington 98008

Cathie Abramowitz
Victoria Fire & Casualty Company
1443 South 37th Street
Mesa, Arizona 85206

27 
28 Curvey Walters

1 subpoenas issued by the Director to compel attendance of
2 witnesses and production of evidence on his or her behalf.

3 Questions concerning issues raised in this Notice of
4 Hearing should be directed to Assistant Attorney General Kathryn
5 Leonard (602-542-3702), 1275 West Washington, Phoenix, Arizona
6 85007.

7 NOTICE OF APPLICABLE RULES

8 On January 23, 1992, the Arizona Department of Insurance
9 adopted A.A.C. R4-14-101 through R4-14-115, setting forth the
10 rules of practice and procedure applicable in contested cases
11 before the Director of Insurance. The hearing will be conducted
12 pursuant to these rules.

13 PURSUANT TO A.A.C. R4-14-106 RESPONDENTS SHALL FILE A
14 WRITTEN ANSWER WITHIN TWENTY (20) DAYS AFTER ISSUANCE OF THIS
15 NOTICE OF HEARING AND SHALL MAIL OR DELIVER A COPY OF THE ANSWER
16 TO THE ASSISTANT ATTORNEY GENERAL DESIGNATED ABOVE. THE ANSWER
17 SHALL STATE RESPONDENTS' POSITION OR DEFENSE AND SHALL
18 SPECIFICALLY ADMIT OR DENY EACH ASSERTION IN THE NOTICE OF
19 HEARING. ANY ASSERTION NOT DENIED SHALL BE DEEMED TO BE
20 ADMITTED. ANY DEFENSE NOT RAISED IN THE ANSWER SHALL BE DEEMED
21 WAIVED. IF AN ANSWER IS NOT TIMELY FILED, THE RESPONDENT SHALL
22 BE DEEMED IN DEFAULT AND THE DIRECTOR MAY DEEM THE ALLEGATIONS
23 ARE TRUE, AND TAKE WHATEVER ACTION IS APPROPRIATE, INCLUDING
24 SUSPENSION, REVOCATION, DENIAL OF A LICENSE, OR RENEWAL OF A
25 LICENSE, IMPOSITION OF A CIVIL PENALTY AND/OR ORDER RESTITUTION
26 TO ANY PARTY INJURED.

1
2 The allegations supporting this Notice of Hearing are as
3 follows:

4 1. Roman Eugene Ruiz ("Ruiz") is presently, and was at
5 all material times, licensed as a property and casualty insurance
6 agent and broker in the state of Arizona (License No. 0234512).
7 Ruiz's licenses expire August 31, 1992.

8 2. Southwest Commercial Agency, Inc. ("Southwest"), is
9 presently, and was at all material times, licensed as a property
10 and casualty agent and broker in the state of Arizona (License
11 No. 0114013). Southwest's licenses expire July 31, 1992.

12 3. Ruiz was at all material times the president of
13 Southwest.

14 4. United States Fidelity and Guaranty Company
15 ("USF&G") is presently, and was at all material times, an insurer
16 authorized to transact business in the state of Arizona.

17 5. In or about 1988, Ruiz and Southwest placed
18 insurance coverage for Desert Pacific Construction, Inc. ("Desert
19 Pacific") with USF&G. USF&G issued policy number LMP07843931701
20 for the period of March 26, 1988 to March 26, 1989. The policy
21 was not renewed and USF&G completed an audit of the policy in
22 August 1989. The audit produced a return premium of \$9,789.00.

23 6. On or about November 15, 1989, Ruiz and Southwest
24 received the \$9,789.00 return premium monies from USF&G.

25 7. Ruiz failed to tender the \$9,789.00 return premium
26 to Desert Pacific and converted it to his own personal use.

. . .

1
2 8. The above referenced conduct of Respondents
3 constitutes the misappropriation or conversion to their own use
4 or illegal withholding of monies belonging to policyholders,
5 insurers, beneficiaries or others and received in or during the
6 conduct of business under the license or through its use in
7 violation of A.R.S. § 20-316(4).

8 WHEREFORE, if after hearing, the Director makes a
9 finding of one or more of the above-described violations, she may
10 suspend, revoke or refuse to renew Respondents' insurance
11 licenses, impose a civil penalty upon Respondents, and/or order
12 restitution to any party injured, pursuant to A.R.S. § 20-316.

13 Pursuant to A.R.S. § 20-150, the Director herewith
14 delegates all of her authority, powers, duties and functions,
15 whether ministerial or discretionary, with which she is vested as
16 Director of Insurance of the State of Arizona, whether implied or
17 expressed, to SARA M. BEGLEY for the purpose of acting as hearing
18 officer in this matter. This delegation of authority shall
19 continue until specifically revoked.

20 DATED this 28th day of July, 1992.

21
22 
23 _____
24 SUSAN GALLINGER, Director
25 Arizona Department of Insurance

26 COPY of the foregoing
27 mailed this 28th day
28 of July, 1992, to:

29 Kathryn Leonard
30 Assistant Attorney General
31 1275 West Washington, Room 259
32 Phoenix, Arizona 85007

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Joseph M. Hennelly, Jr., Deputy Director
Jay Rubin, Assistant Director
Maureen Catalioto, Supervisor, Licensing
Arnold Sniegowski, Investigator
Department of Insurance
3030 North Third Street, Suite 1100
Phoenix, Arizona 85012

Roman E. Ruiz
10428 South 47th Street
Phoenix, Arizona 85004

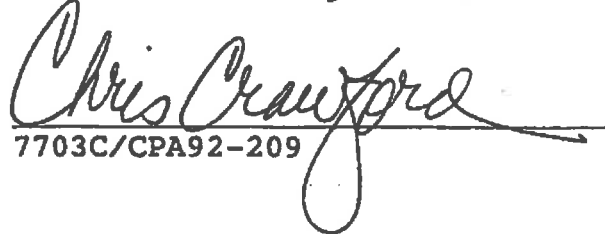
Southwest Commercial Agency, Inc.
c/o Roman E. Ruiz
Winter-Barrett-Leavitt Insurance Agency, Inc.
6330-2 East Thomas Road
Suite 228
Scottsdale, Arizona 85251

Paul S. Harter, Esq.
PAUL S. HARTER, P.C.
Brookstone Building, Suite 160
2025 North Third Street
Phoenix, Arizona 85004
Attorney for Desert Pacific Construction

United States Fidelity
and Guaranty Company
1100 East 6600 South
P.O. Box 21100
Salt Lake City, Utah 84121

American Star Insurance Company
350 California Street
San Francisco, California 94104

Unigard Insurance Company
15805 N.E. 24th Street
Bellevue, Washington 98008


7703C/CPA92-209