

STATE OF ARIZONA

MAR 18 1996

DEPARTMENT OF INSURANCE

DEPARTMENT OF INSURANCE
By *llc*

In the Matter of:)	Docket No. 95A-198-INS
)	
NATIONAL INSURANCE TRACKING)	
SERVICES, INC. and)	ORDER
DONALD GERALD SCHRECK,)	
)	
Respondents.)	
)	
_____)	

On March 15, 1996, the Office of Administrative Hearings, through Administrative Law Judge Lewis D. Kowal submitted "Recommended Findings of Fact, Conclusions of Law and Recommended Order", a copy of which is attached and incorporated by this reference. The Director of the Arizona Department of Insurance has reviewed the recommendation, and enters the following order:

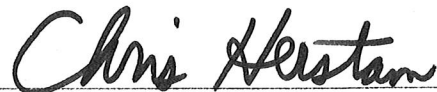
1. The recommended findings of fact and conclusions of law are adopted.
2. All insurance licenses issued by the Department to National Insurance Tracking Services are immediately revoked.
3. All insurance licenses issued by the Department to Donald Gerald Schreck are immediately revoked.
4. National Insurance Tracking Services, Inc., will pay to the Department within 60 days of the effective date of the Director's Order a civil penalty in the amount of \$500.00.
5. Donald Gerald Schreck will pay to the Department within 60 days of the effective date of the Director's Order a civil penalty in the amount of \$500.00.

NOTIFICATION OF RIGHTS

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

7 The final decision of the Director may be appealed to
8 the Superior Court of Maricopa County for judicial review
9 pursuant to A.R.S. §20-166.

10 EFFECTIVE this 18th day of March, 1996.

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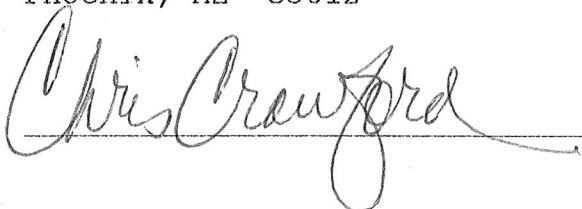
13 Chris Herstam
Director of Insurance

14 A copy of the foregoing
15 mailed this 18th day of
March, 1996, to:

16 Charles R. Cohen, Deputy Director
17 Gregory Y. Harris, Executive Assistant Director
18 John Gagne, Assistant Director
Maureen Catalioto, Supervisor
19 Department of Insurance
2910 N. 44th St., Suite 210
Phoenix, AZ 85018

20 Nancy Bonnell
Assistant Attorney General
21 1275 West Washington
Phoenix, AZ 85012

22 Ronald W. Meyer
23 Attorney at Law
3309 N. 2nd Street
24 Phoenix, AZ 85012

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IN THE OFFICE OF ADMINISTRATIVE HEARINGS MAR 15 1996

Office of Administrative Hearings
~~DEPARTMENT OF INSURANCE~~
By *[Signature]*

In the Matter of

No. 95A-198-INS

NATIONAL INSURANCE TRACKING
SERVICES, INC. and DONALD
GERALD SCHRECK,

RECOMMENDED FINDINGS OF
FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER

Respondents.

On February 26, 1996, a hearing took place in the above-referenced matter. Assistant Attorney General Kathryn Leonard appeared on behalf of the Arizona Department of Insurance ("Department") and Ronald W. Meyer appeared on behalf of Respondents National Insurance Tracking Services, Inc. ("National Insurance") and Donald G. Schreck ("Mr. Schreck").

Based upon the entire record, including all pleadings, motions, testimony, and exhibits, Administrative Law Judge Lewis D. Kowal prepared the following Recommended Findings of Fact, Conclusions of Law, and Recommended Order for consideration by the Director of the Department ("Director").

FINDINGS OF FACT

1. At all times material to this matter, National Insurance was and is an Arizona corporation currently licensed as a life and disability agent and property and casualty insurance broker in the State of Arizona.

2. At all times material to this matter, Mr. Schreck was and is licensed as a life and disability agent and property and casualty insurance broker in the State of Arizona.

3. At all times material to this matter, Mr. Schreck was and is the owner and a director of National Insurance.

4. On or about July 14, 1992, California Thrift & Loan ("CTL") obtained a quote from Mr. Schreck for a contingent and direct equipment floater policy (the "policy") for the period July 24, 1992 to July 24, 1993 to be issued through Fireman's Fund Insurance Company ("Fireman's Fund") for CTL and California Fed. Credit as the insured under one policy.

1 5. Prior to the issuance of the policy, CTL had obtained a contingent and
2 direct equipment floater policy through National Insurance issued by Chubb. David
3 Ames, formerly the president of National Insurance, had arranged that transaction
4 on behalf of National Insurance without Mr. Schreck's direct involvement.

5 6. The evidence presented at the hearing established that Mr. Schreck,
6 acting on his own behalf as well as on behalf of National Insurance, handled all of
7 National Insurance's transactions involving CTL's insurance coverage with
8 Fireman's Fund.

9 7. Mr. Schreck represented to CTL that to effect coverage with Fireman's
10 Fund, which would be similar to the coverage CTL previously had with Chubb, CTL
11 was to forward a \$12,000.00 premium deposit and make monthly payments of
12 \$3,000.00 to National Insurance. Mr. Schreck also arranged with CTL for it to
13 provide monthly reports to National Insurance for the contingent and direct
14 coverages.

15 8. On July 23, 1992, Mr. Schreck wrote a letter to Brett Benton of
16 Fireman's Fund wherein Mr. Schreck changed the premium deposit for CTL from
17 \$12,000.00 to \$5,000.00. In that letter, Mr. Schreck also changed the monthly
18 reporting requirement to a quarterly reporting requirement. Mr. Schreck did not
19 notify CTL of those changes. Mr. Schreck further represented that the reports
20 would be evaluated by Fireman's Fund to determine if CTL was entitled to a
21 premium refund.

22 9. On July 24, 1992, National Insurance received and deposited a
23 \$12,000.00 premium deposit from CTL into National Insurance's trust bank account
24 number 1111012831.

25 10. Although National Insurance and Mr. Schreck received a \$12,000.00
26 premium deposit from CTL, Mr. Schreck only forwarded \$5,000.00 to Fireman's
27 Fund.

28 11. On July 24, 1992, Mr. Schreck issued CTL a binder. Subsequently,
29 Fireman's Fund issued the policy to CTL.

30 12. From October, 1992 to February, 1993, CTL made monthly premium
31 payments of at least \$3,000.00 to National Insurance which amounted to a total of
32 \$27,000.00. During that same time period and each subsequent month for the initial
33 policy period, CTL provided National Insurance with a monthly report for the
34 contingent and direct coverages.

1 13. Although Fireman's Fund requested monthly or quarterly reports from
2 National Insurance, Fireman's Fund did not receive such reports in a timely manner.

3 14. On October 29, 1992 and April 12, 1993, Mr. Benton requested that a
4 loss control survey be conducted by Fireman's Fund on the policy.

5 15. The results of Fireman's Fund loss control survey revealed that the
6 leasing value figures which Mr. Schreck had provided to Mr. Benton were higher
7 than the actual value leasing figures for CTL.

8 16. On July 1, 1993, Fireman's Fund sent National Insurance and CTL a
9 nonrenewal letter effective September 3, 1993.

10 17. The evidence presented at the hearing established that Mr. Schreck
11 approached Fireman's Fund concerning coverage for CTL which was unique and
12 that Fireman's Fund, CTL and Mr. Schreck had a different expectation and
13 understanding as to the coverage that was provided.

14 18. The policy provided for Fireman's Fund to receive a premium deposit
15 that was to be a working deposit from which the actual premium owed would be
16 calculated based upon the quarterly reports of CTL. That actual premium was to be
17 applied against CTL's premium deposit until exhausted and CTL was to pay
18 premiums thereafter. By the end of policy period, any unearned premium would be
19 returned to CTL.

20 19. From July 1992 through February 1993, CTL forwarded to National
21 Insurance a total premium¹ amount of \$39,000.00 of which National Insurance
22 forwarded \$5,000.00 to Fireman's Fund.

23 20. Mr. Schreck testified that from the initial stages of this transaction he
24 anticipated that National Insurance would pay Fireman's Fund on the CTL account
25 once there was an audit upon which a billing statement could be generated. Mr.
26 Schreck's testimony in that regard is not credible. The evidence presented at the
27 hearing established that Fireman's Fund did not represent to Mr. Schreck that it
28 would conduct or even anticipated conducting an audit on the CTL account.

29 21. The uncontroverted evidence established that National Insurance and
30 Mr. Schreck failed to forward to Fireman's Fund the net premium² amount of
31 \$27,256.95 collected from CTL and that National Insurance and Mr. Schreck
32 misappropriated and converted the funds to their own use.

33 ¹ Refers to the total amount collected for premium which includes the commission due the agent.

34 ² Refers to the amount of premium collected minus the commission due the agent.

1 22. The terms of the agency agreement between National Insurance and
2 Fireman's Fund provided that National Insurance act as Fireman's Fund's trustee
3 with respect to all insurance premium payments received.

4 23. Mr. Schreck credibly testified that the premiums collected by National
5 Insurance from CTL were deposited in National Insurance's trust account and
6 transferred into National Insurance's operating account to pay the operating
7 expenses of National Insurance.

8 24. Mr. Schreck argued as a mitigating factor that, during the policy
9 period, his daughter was diagnosed with a rare form of cancer and that he was
10 inattentive to the business of National Insurance during that period of time as a
11 result of his daughter's condition.

CONCLUSIONS OF LAW

12
13 1. National Insurance and Mr. Schreck received notice of this proceeding
14 as prescribed by A.R.S. §§20-163 and 41-1061.

15 2. The Director has jurisdiction over this matter pursuant to A.R.S.
16 §§20-161 and 20-290.

17 3. The conduct of National Insurance and Mr. Schreck as described
18 above constitutes a record of dishonesty in business or financial matters under
19 A.R.S. §20-290(B)(2).

20 4. The conduct of National Insurance and Mr. Schreck as described
21 above constitutes the existence of any cause for which original issuance or any
22 renewal of an insurance license could have been refused such that National
23 Insurance and Mr. Schreck's licenses may be suspended or revoked pursuant to
24 A.R.S. §§20-316(A)(1), together with 20-290(B)(2).

25 5. The conduct of National Insurance and Mr. Schreck as described
26 above constitutes a wilful violation of, or wilful noncompliance with, any provision of
27 this title, or any lawful rule, regulation or order of the Director in violation of A.R.S.
28 §20-316(A)(2).

29 6. The conduct of National Insurance and Mr. Schreck as described
30 above constitutes misappropriation or conversion or illegal withholding of monies
31 belonging to policyholders, insurers, beneficiaries or others and received in or
32 during the conduct of business under the license or through its use in violation of
33 A.R.S. §20-316(A)(4).

34

1 7. The conduct of National Insurance and Mr. Schreck as described
2 above constitutes conduct of affairs under the license showing them to be
3 incompetent or a source of injury and loss to, or repeated complaint by, the public or
4 any insurer, in violation of A.R.S. §20-316(A)(7).

5 8. Grounds exist for the Director to suspend, revoke, or refuse to renew
6 the insurance licenses issued to National Insurance and Mr. Schreck and impose
7 civil penalties, pursuant to A.R.S. §20-316(A), (B) and (C).

8 **RECOMMENDED ORDER**

9 Based upon the above, the undersigned Administrative Law Judge
10 recommends that

11 1. All insurance licenses issued by the Department to National Insurance
12 Tracking Services, Inc. be immediately revoked.

13 2. All insurance licenses issued by the Department to Donald Gerald
14 Schreck be immediately revoked.

15 3. National Insurance Tracking Services, Inc. pay to the Department
16 within 60 days of the effective date of the Director's Order a civil penalty in the
17 amount of \$500.00.

18 4. Donald Gerald Schreck pay to the Department within 60 days of the
19 effective date of the Director's Order a civil penalty in the amount of \$500.00.

20 DATED this 15th day of March, 1996.

21 OFFICE OF ADMINISTRATIVE HEARINGS
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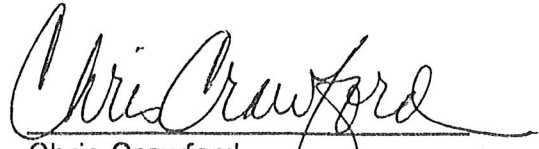
23
24 *Lewis D. Kowal*

25 LEWIS D. KOWAL
26 Administrative Law Judge
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COPY of the foregoing mailed/delivered
this 15th day of March, 1996, to:

Chris Herstam, Director
Arizona Department of Insurance
2910 North 44th Street, Suite 210
Phoenix, AZ 85018


Chris Crawford