

SEP 29 1998

DEPT. OF INSURANCE
BY B. B.

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

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In the Matter of:) Docket No. 98A-081-INS
)
RICHARD DEAN CARRINGTON,) **ORDER**
)
Respondent.)
_____)

On September 22, 1998, the Office of Administrative Hearings, through Administrative Law Judge Casey J. Newcomb, issued a Recommended Decision of the Administrative Law Judge ("Recommended Decision"), a copy of which is attached and incorporated by this reference. The Director of the 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 except that finding of fact No. 5, line 15 is modified to correct what appears to be a typographical error, by changing the date "May 7, 1998" to "May 7, 1997," which is the date reflected in State's Exhibit 2.

2. The Respondent's license is revoked.

NOTIFICATION OF RIGHTS

The final decision of the Director may be appealed to the Superior Court of Maricopa County for judicial review pursuant to A.R.S. §§ 12-904 and 20-166. A party filing an appeal must

1 notify the Office of Administrative Hearings of the appeal within ten days after filing the complaint
2 commencing the appeal, pursuant to A.R.S. § 12-904(B).

3 DATED this 29th of September, 1998

4 
5 _____
6 Charles R. Cohen
Acting Director of Insurance

7 A copy of the foregoing mailed
8 this 29th day of September, 1998

9 Sara M. Begley, Acting Deputy Director
10 Vista T. Brown, Executive Assistant
11 John Gagne, Assistant Director
12 Maureen Catalioto, Supervisor
Department of Insurance
2910 N. 44th Street, Suite 210
Phoenix, AZ 85018

13 Casey J. Newcomb
14 Administrative Law Judge
15 Office of Administrative Hearings
1700 W. Washington, Suite 602
Phoenix, AZ 85007

16 Shelby Cuevas
17 Assistant Attorney General
1275 W. Washington, Suite 602
Phoenix, AZ 85007

18 Richard Dean Carrington
19 8912 E. Pinnacle Peak, #299
Scottsdale, AZ 85255

20 Richard Dean Carrington
21 Carrington Estate Planning Services
22 2266 South Dobson Road, Suite 212
Mesa, AZ 85202

RECEIVED
SEP 29 1998
LICENSING SECTION

1 Jackson National Life Insurance Company
P.O. Box 24068
2 Lansing, MI 48909

3 USG Annuity and Life Company
P.O. Box 1635
4 Des Moines, Iowa 50306-1635

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6 Betty Bryant

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1 3. Part V, Question E of the Application states:

2 Are any civil, administrative, other judicial or quasi-judicial proceedings of any
3 kind, or any criminal proceedings in which an indictment, criminal complaint or
4 information has been issued naming you as defendant, currently pending
5 against you in any jurisdiction based on any of the following:

- 6 1. Misappropriation, conversion or the withholding of moneys?
- 7 2. Incompetence or a source of injury and/or loss to anyone?
- 8 3. Dishonesty in business or financial matters?
- 9 4. Fraud or misrepresentation?
- 10 5. Any cause arising out of an insurance transaction?

11 4. The Respondent answered "No" to the aforementioned questions in Part V,
12 Question E of the Application. See State's Exhibit 1. On May 30, 1997, the
13 Respondent signed and dated the Application, certifying that the information recorded
14 on the Application was true and correct to the best of his knowledge. Id.

15 5. On or about May 7, 1998, the Arizona Corporation Commission (the "ACC") entered
16 a temporary cease and desist order (hereinafter the "Temporary Order" or "State's
17 Exhibit 2") in In the Matter of Carrington Estate Planning Services, et al., Docket No. S-
18 3188-I, entitled "Temporary Order To Cease And Desist And Notice Of Opportunity For
19 Hearing." See State's Exhibit 2. In the Temporary Order, the ACC found that the
20 Respondent offered or sold unregistered securities in violation of A.R.S. §44-1841. See
21 State's Exhibit 2, page 7. The ACC further found that the Respondent transacted sales
22 and offerings of securities as an unregistered dealer and/or salesman in violation of
23 A.R.S. §44-1842. Id. at page 8. The ACC also found that the Respondent committed
24 fraud in connection with the offerings or sales of securities in violation of A.R.S. §44-
25 1991. Id. Finally, the ACC ordered the Respondent to cease and desist from violating
26 the Securities Act and the Investment Management Act. Id. at pages 11-12.

26 6. The Respondent failed to disclose the May 7, 1997 Temporary Order information on
27 his Application, dated May 30, 1997. See State's Exhibit 1.

28 7. The Respondent testified that he did not completely understand Part V, Question E
29 of the Application. However, the Respondent conceded that he did not contact the
30

1 Department for help in understanding this part of the Application. The Respondent
2 further testified that Part V, Question E of the Application was poorly worded. Finally,
3 the Respondent testified that he did not feel that the ACC matter (regarding the
4 Temporary Order) was an "administrative proceeding." The Respondent testified that
5 he thought that the ACC matter was just some allegations that eventually would be
6 resolved in his favor.

7 8. On or about January 12, 1998, the Respondent entered into a cease and desist
8 order and consent (hereinafter the "Order and Consent" or "State's Exhibit 3") with the
9 ACC in In the Matter of Carrington Estate Planning Services, et al., Docket No. S-3188-
10 I, Decision No. 60663, entitled "Order To Cease & Desist, Assess An Administrative
11 Penalty, And Consent To Same Regarding Carrington Estate Planning Services,
12 Richard Dean Carrington, Blake E. Morrow, and James William White." See State's
13 Exhibit 3.

14 9. The ACC concluded that that the Respondent offered or sold unregistered securities
15 in violation of A.R.S. §44-1841. See State's Exhibit 3, page 7. The ACC further
16 concluded that the Respondent transacted sales and offerings of securities as an
17 unregistered dealer and/or salesman in violation of A.R.S. §44-1842. Id. at page 8.
18 The ACC also concluded that the Respondent, in connection with the offer and sale of
19 securities, made untrue statements of material fact and omitted material facts in
20 violation of A.R.S. §44-1991. Id.

21 10. The ACC concluded that the Respondent, as an unlicensed investment adviser,
22 engaged in the business of advising others as to the value of securities and offered,
23 solicited, and/or negotiated for the sale of or sold investment advisory services in
24 violation of A.R.S. §44-3151. See State's Exhibit 3, page 8.

25 11. The ACC concluded that the Respondent, in connection with the actions of an
26 investment adviser and/or investment adviser representative, directly or indirectly made
27 untrue statements of material fact and omitted material facts . . . and engaged in
28 transactions, practices, or courses of business which operated or would operate as a
29 fraud or deceit upon offerees and investors, in violation of A.R.S. §44-3241. See
30 State's Exhibit 3, page 8.

- 1 12. The Respondent agreed to cease and desist from the following:
- 2 A. Offering to sell or selling promissory notes or offering to sell or selling any
- 3 other securities unless the securities are registered with the ACC . . . ;
- 4 B. Offering to sell or selling securities by an unregistered dealer and/or
- 5 salesman . . . ;
- 6 C. Offering to sell or selling securities within or from the state of Arizona in
- 7 violation of A.R.S. §44-1991;
- 8 D. Engaging in the business of advising others, either directly or through
- 9 publications or writings, as to the value of securities and offering, soliciting,
- 10 and/or negotiating for the sale of investment advisory services unless
- 11 licensing as an investment adviser or investment adviser representative is
- 12 obtained . . . ; and
- 13 E. Engaging in the activities of an investment advisor in violation of A.R.S. §44-
- 14 3241.

15 See State's Exhibit 3, page 9.

16 13. The ACC further ordered that pursuant A.R.S. §44-2036 and §44-3296, the

17 Respondent (and the other respondents) shall jointly and severally pay an

18 administrative penalty of \$10,000.00. See State's Exhibit 3, page 9. The Order and

19 Consent took effect on February 9, 1998.

20 14. The Respondent testified that he has already paid the \$10,000.00 administrative

21 penalty. The Respondent testified that it was a business decision to sign the Order and

22 Consent. The Respondent testified that he never admitted to the findings of facts and

23 conclusions of law within the Order and Consent. In fact, the Respondent testified that

24 he would have requested a hearing with the ACC (in lieu of signing the Order and

25 Consent) if he had known that the Department of Insurance would revoke his License

26 based upon the Order and Consent.

27 15. Blake E. Morrow and James William White were the Respondent's employees.

28 They were also co-respondents in the ACC matter resulting in the Order and Consent.

29 The Respondent testified that Morrow and White may have defrauded or misled

30 investors. However, the Respondent testified that he personally never defrauded an

individual or made a misrepresentation to anyone. The Respondent did concede that

1 he oversaw and was responsible for the actions of his employees. The Respondent
2 further testified that no individual was financially hurt by the actions underlying the
3 Order and Consent. The Respondent stated that Morrow and White no longer work for
4 him.

5 16. The Respondent testified that the ACC could have resolved its dispute with him by
6 simply contacting him. The Respondent felt that the ACC wasted a lot of money, time
7 and resources pursuing its case against him. The Respondent also testified that the
8 Department of Insurance also could have easily resolved its dispute with the
9 Respondent by simply telephoning him when the problem arose with Part V, Question E
10 of the Application.

11 17. The Order and Consent clearly states that the Respondent "understands that [he]
12 shall not deny the Findings of Fact and Conclusions of Law as set forth in this Order
13 now or any time in the future." See State's Exhibit 3, page 12.

14 18. The Assistant Attorney General requested that the Respondent's License be
15 revoked. The Assistant Attorney General did not request a civil penalty. The
16 Respondent requested that this matter be dismissed.

17 19. The undersigned Administrative Law Judge finds that the Temporary Order was an
18 order made against the Respondent in an administrative proceeding. The undersigned
19 Administrative Law Judge further finds that the findings and conclusions in the
20 Temporary Order clearly reveal that the Respondent was involved in conduct pertaining
21 to dishonesty in business or financial matters, fraud and misrepresentation. The
22 undersigned Administrative Law Judge further finds that the Respondent willfully failed
23 to disclose the Temporary Order information on Part V, Question E of the Application.
24 The undersigned Administrative Law Judge further finds that it is inconceivable that (1)
25 the Respondent could not understand Part V, Question E of the Application, and (2)
26 that the Respondent believed that the ACC matter was not an administrative
27 proceeding. The Respondent is far too bright and sophisticated to have such
28 misunderstandings.

29 20. The undersigned Administrative Law Judge finds that the the Order and Consent
30 and the Temporary Order comprise a record of dishonesty in business or financial
matters.

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CONCLUSIONS OF LAW

1. The Department has the burden of proof, and the standard of proof on all issues is by a preponderance of the evidence. Culpepper v. State, 187 Ariz. 431, 930 P.2d 508 (App. 1996). A "preponderance of the evidence is such proof as convinces the trier of fact that the contention is more probably true than not." Morris K. Udall, *Arizona Law of Evidence*, §5 (1960). It "is evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." *Black's Law Dictionary*, 1182 (6th ed. 1990).

2. The Respondent's failure to disclose the Temporary Order information on Part V, Question E of the Application constitutes the willful misrepresentation of a fact to be disclosed in an application within the meaning of A.R.S. §§20-291(G) and 20-316(A)(3).

3. The Respondent's failure to disclose the Temporary Order information on Part V, Question E of the Application is a cause for which the renewal of a license could have been refused within the meaning of A.R.S. §20-316(A)(1).

4. The Temporary Order and the Order and Consent comprise a record of dishonesty in business or financial matters. Accordingly, the Respondent has a record of dishonesty in business or financial matters within the meaning of A.R.S. §20-290(B)(2).

5. The Respondent's aforementioned conduct constitutes the willful violation of, or the willful noncompliance with, any provision of this title, or any lawful rule, regulation or order of the Director within the meaning of A.R.S. §20-316(A)(2).

6. The undersigned Administrative Law Judge finds that grounds exist to revoke the Respondent's License pursuant to A.R.S. §20-316(A).

RECOMMENDED DECISION

The undersigned Administrative Law Judge recommends that the Respondent's License Number 2077 be revoked.

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Done this day, September 22, 1998.



Casey J. Newcomb
Administrative Law Judge

Original transmitted by mail this
23 day of September, 1998, to:

Mr. Charles R. Cohen, Acting Director
Department of Insurance
2910 North 44th Street, Ste. 210
Phoenix, AZ 85018

By Chris Crawford Thomas