

JAN 26 1994

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STATE OF ARIZONA

DEPARTMENT OF INSURANCE DEPARTMENT OF INSURANCE
By ccc

In the Matter of) Docket No. 8150
)
)
4 DENNIS OWEN WALRATH,)
) SANDRA KAY WALRATH, SAMDEN,)
5 INC., dba GREAT RATE) ORDER
INSURANCE, and AMERICAN)
6 UNITED INSURANCE, INC.,)
)
) Respondents.)
_____)

On October 28, 1993 a hearing was held in the above-captioned matter. The Arizona Department of Insurance ("Department") was represented by Ms. Kathryn Leonard, Assistant Attorney General. Respondents Dennis Walrath and Sandra Walrath were present in propria persona. Respondents Samden, Inc. and American United Insurance, Inc. were not represented at the hearing.

Based upon the testimony, evidence and arguments presented at hearing and the posthearing memoranda, the Director and the Hearing Officer make the following findings of fact and conclusions of law and enter the following order:

FINDINGS OF FACT

1. Notice of this hearing was mailed to each Respondent at their last address of record.
2. During a prehearing conference, Respondents admitted the allegations contained in paragraphs 1-20, 26, 28, 29, 31-33, 40, 42-46, 50, 52, 54, 71-74, 85, 92, 93, 95, 104, 106, 116, 123-125 and 127 of the Notice of Hearing.
3. Respondent Samden, Inc., dba Great Rate Insurance ("Samden") is presently, and was at all material times, licensed

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LICENSING SECTION

1 as property and casualty agent and broker in the State of
2 Arizona (license number 082987). That license will expire
3 October 31, 1994. Great Rate is an assumed name of Samden,
4 Inc., an Arizona corporation. Its officers are Dennis O.
5 Walrath, president, and Sandra K. Walrath, secretary/
6 treasurer. In 1993, Respondent Samden filed a Chapter 11
7 Bankruptcy Petition.

8 4. Respondent American United Insurance, Inc.,
9 ("American United") was, at all material times, licensed as a
10 life and disability and property and casualty insurance agent in
11 the State of Arizona (license number 0576883). The life and
12 disability license expired February 28, 1993. The property and
13 casualty license expires February 28, 1994. Respondent American
14 United is an Arizona corporation. At the time of its license
15 renewal application, the corporate officers were Respondent
16 Dennis Walrath, president; Respondent Sandra Walrath,
17 secretary/treasurer; and Scott Cumpston, vice president.
18 Sometime thereafter the presidency was changed to Scott
19 Cumpston. Mr. Cumpston was president until August 1992, when
20 Rita Thornton became president. Currently and at all material
21 times to the findings in this Order, Respondent Dennis Walrath
22 has been and is the sole owner and sole director. Respondent
23 Sandra Walrath is the secretary/treasurer of the corporation,
24 but does not work on a regular basis in the office. On or about
25 March 22, 1993, Respondent American United filed a Chapter 7
26 Bankruptcy Petition.

27 5. Respondent Dennis Owen Walrath ("Dennis Walrath")
28 is licensed as a life and disability, property and casualty

1 agent and broker in the State of Arizona (license number
2 0056577). The life and disability license expires July 31,
3 1995. The property and casualty license expires July 31, 1994.

4 6. Respondent Sandra Kay Walrath ("Sandra Walrath")
5 is licensed as a life and disability agent, property and
6 casualty agent and broker in the State of Arizona (license
7 number 0494120). The property and casualty license expires
8 October 31, 1994. The life and disability licensed expired
9 October 31, 1993.

10 7. Respondents Dennis Walrath and Sandra Walrath are
11 listed in the license application of Respondent Samden as
12 authorized representatives.

13 8. On December 14, 1993, all Respondents surrendered
14 their licenses to the Department together with the filing of
15 their posthearing memorandum. The Department does not accept
16 surrender of licenses in lieu of disciplinary action. While
17 Respondents have a right to voluntarily surrender their license
18 and voluntarily cease from doing insurance business under their
19 license, the Department has an obligation for the protection of
20 the public, to continue with pending disciplinary actions, until
21 the conclusion of the case.

22 9. Respondent Dennis Walrath admitted that he
23 completely delegated to Mr. Cumpston and Ms. Thornton the
24 responsibility to manage the office of Respondent American
25 United. There was no training or controls in place to monitor
26 their actions or the business of the agency.

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COUNT 1

10. On or about November 19, 1992, an Amended Consent Order was filed In the Matter of Great Rate Insurance Agency, Docket No. 7785, wherein Respondent Samden was found to have misrepresented the terms of a policy within the meaning of A.R.S. §20-443.

11. On or about February 16, 1993, an Order was entered by the Director of the Arizona Department of Insurance, In the Matter of American United Insurance, Inc., and Scott Lee Cumpston, Docket No. 7761, wherein Respondents were found to be incompetent and a source of injury within the meaning of A.R.S. §20-316(A).

COUNT II

12. On or about September 10, 1991, Kelly Kassa ("Kassa") purchased a six month automobile insurance policy from Respondent American United underwritten by North American Indemnity Company ("North American") and financed by Emerald Finance Company ("Emerald").

13. On or about October 14, 1992, GAB Business Services ("GAB") issued check number #5293452, in the amount of \$351.00 to Emerald for reimbursement of unearned premium on Kassa's North American policy.

14. On or about October 22, 1992, Emerald issued check number #49591, in the amount of \$351.00 to Respondent American United for reimbursement of the unearned premium on Kassa's policy.

15. Respondent American United failed to forward the premium refund to Kassa.

1 16. Kassa made numerous attempts to contact
2 Respondent American United. Neither Respondent American United
3 or its representatives returned Kassa's calls and failed to
4 advise her the status of her premium refund.

5 17. On March 2, 1993, the Department received a
6 letter of complaint from GAB regarding respondent American
7 United's failure to return Kassa's premium refund.

8 18. On or about March 8, 1993, the Department called
9 the office of Respondent American United regarding the return of
10 Kassa's premium refund.

11 19. On or about March 12, 1993, Respondent Dennis
12 Walrath, on behalf of Respondent American United, faxed the
13 Department a copy of money order number 04-500373106, in the
14 amount of \$351.00, made payable to Kassa, which represented the
15 return of Kassa's premium refund.

16 20. Kassa never received the money order from
17 Respondent American United.

18 21. On or about March 17, 1993, the Department served
19 Respondent Dennis Walrath with a Subpoena Duces Tecum
20 instructing him to appear at the Department and to bring certain
21 files with him, including the file on Kassa.

22 22. On or about March 19, 1993, Respondent Dennis
23 Walrath appeared at the Department and was questioned about the
24 money order issued to Kassa. Respondent Dennis Walrath stated
25 the money order was mailed on March 8, 1993, but had been
26 addressed to the wrong address.

27 23. Respondent Dennis Walrath also stated he has no
28

1 record of ever receiving a refund check from Emerald in the
2 amount of \$351.00 for a premium refund on Kassa's auto policy.

3 24. Several months later, Kassa received her \$351.00
4 premium refund from Respondent American United; at least seven
5 months after Emerald returned the money to Respondent American
6 United.

7 COUNT III

8 25. On or about January 6, 1993, Respondent Emerald
9 issued check number 55074 to David Seivert ("Seivert") and
10 Respondent American United in the amount of \$30.00, which
11 represented return of Seivert's premium deposit for an
12 automobile insurance policy underwritten by North American.

13 26. Respondent American United failed to forward the
14 \$30.00 refund to Seivert.

15 27. On March 2, 1993, the Department received a
16 letter of complaint from GAB regarding Respondent American
17 United's failure to return Seivert's refund.

18 28. On or about March 8, 1993, the Department called
19 Respondent American United's office regarding the return of
20 Seivert's refund.

21 29. On or about March 12, 1993, Respondent Dennis
22 Walrath on behalf of Respondent American United, faxed the
23 Department a copy of money order number 04-500373169, in the
24 amount of \$30.00, made payable to Seivert which represented the
25 refund of Seivert's deposit. Seivert received the refund on
26 March 10, 1993, two months after Emerald refunded the money to
27 Respondent American United.

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1 30. On or about March 17, 1993, the Department served
2 Respondent Dennis Walrath with a Subpoena Duces Tecum
3 instructing him to appear at the Department and to bring certain
4 files with him, including the file on Seivert.

5 31. On or about March 19, 1993, Respondent Dennis
6 Walrath appeared at the Department and was questioned about the
7 money order issued to Seivert. Dennis Walrath stated the money
8 order was mailed on March 8, 1993, but had been addressed to the
9 wrong address.

10 32. Respondent Dennis Walrath failed to bring
11 Seivert's file and stated he did not know the location of the
12 file.

13 COUNT IV

14 33. On or about January 12, 1992, Emerald issued
15 check No. 50939, in the amount of \$253.97, to Respondent
16 American United which represented a premium refund on an
17 automobile insurance policy for Laura Entrekin ("Entrekin")
18 underwritten by North American.

19 34. Respondent American United failed to forward the
20 premium refund to Entrekin.

21 35. On or about January 7, 1993, Entrekin filed a
22 complaint with the Department regarding Respondent American
23 United's failure to return her premium refund.

24 36. On or about January 11, 1993, the Department
25 notified Respondent Dennis Walrath that the Department had
26 received a complaint from Entrekin and ordered him to respond to
27 the complaint by February 8, 1993.

28

1 37. On March 17, 1993, the Department questioned
2 Respondent Dennis Walrath during an examination under oath.
3 Respondent Dennis Walrath could not prove or explain why return
4 premium was never sent to Entrekin and was also unable to
5 produce any files on Entrekin.

6 38. At the examination under oath on March 17, 1993,
7 Respondent Dennis Walrath was requested to produce specific
8 documents on or before March 31, 1993. Respondent Dennis
9 Walrath failed to produce the documents.

10 COUNT V

11 39. On or about January 15, 1993, Emerald issued
12 check number 55884 to Angie Hennessy ("Hennessy") and Respondent
13 American United in the amount of \$74.56 which represented a
14 premium cancellation refund for automobile insurance
15 underwritten by North American.

16 40. Respondent American United failed to forward the
17 premium refund to Hennessy.

18 41. On or about January 25, 1993, the Department
19 received a complaint from Hennessy regarding Respondent American
20 United's failure to return her premium.

21 42. On or about February 1, 1993, the Department
22 notified Respondent American United that the Department had
23 received a complaint from Hennessy and requested a response to
24 the complaint by March 1, 1993.

25 43. In an examination under oath on March 23, 1993,
26 Respondent Dennis Walrath stated he had no records of the policy
27 cancellation and return premium for Hennessy and did not know
28 the whereabouts of the file.

1 44. To date, Hennessy has not received her premium
2 refund.

3 COUNT VI

4 45. On or about August 2, 1992, Ryan Macey ("Macey")
5 purchased a six month automobile insurance policy from
6 Respondent American United underwritten by North American and
7 financed by Emerald. That policy was later cancelled.

8 46. On or about November 4, 1992, Emerald issued
9 check number 50691 to Macey and Respondent American United in
10 the amount of \$237.09 which represented a premium refund on
11 Macey's North American Policy.

12 47. Respondent American United failed to forward the
13 premium refund to Macey.

14 48. On or about December 9, 1992, Macey filed a
15 complaint with the Department regarding Respondent American
16 United's failure to return the premium refund.

17 49. On or about January 9, 1993, Respondent American
18 United returned Macey's premium refund over two months after
19 Emerald returned the monies to Respondent American United.

20 50. In an examination under oath on March 17, 1993,
21 Respondent Dennis Walrath was requested to provide the
22 Department with bank account numbers for Respondent Samden and
23 Respondent American United by March 31, 1993. To date,
24 Respondent Dennis Walrath has not complied with the Department's
25 request.

26 COUNT VII

27 51. On or about November 19, 1992, Respondent
28 American United received a completed application and premium

1 payment in the amount of \$596.00 from Marjorie Morace ("Morace")
2 for a six month comprehensive and collision policy to be
3 underwritten by Southwest Fire & Casualty Insurance Company
4 ("Southwest") and a liability policy to be underwritten by
5 Empire Fire and Marine Insurance Company ("Empire").

6 52. On or about November 25, 1992, Southwest rejected
7 Morace's application and issued Respondent American United check
8 number 2905 in the amount of \$221.00 as Morace's premium refund.

9 53. On or about December 24, 1992, Morace's Empire
10 liability was cancelled for failure to pay additional premium
11 due.

12 54. On or about February 3, 1993, Respondent American
13 United returned Morace premium refund by issuing her check
14 number 025257 in the amount of \$221.00.

15 55. On or about February 12, 1993, check number
16 025257 was returned by the bank marked, "NSF".

17 56. On or about March 16, 1993, Morace filed a
18 complaint with the Department regarding Respondent American
19 United's failure to return her premium refund.

20 57. Subsequently in March 1993, Respondent American
21 United paid Morace the \$221.00; approximately four months after
22 Respondent American United received the returned monies from
23 Southwest.

24 COUNT VIII

25 58. On or about April 29, 1992, Dennis O'Connor
26 ("O'Connor) purchased a six month automobile insurance policy
27 from Respondent American United underwritten by Coronet
28

1 Insurance Company/Insurance Service Underwriters of the
2 Southwest, Inc., ("ISU").

3 59. On or about December 8, 1992, ISU processed an
4 endorsement to delete one of O'Connor's cars from his policy.
5 Subsequently, ISU issued Respondent American United a credit in
6 the amount of \$172.00 which was reflected on Respondent American
7 United's December, 1992 statement from ISU.

8 60. Respondent American United failed to forward
9 O'Connor his \$172.00 premium refund or credit his existing
10 policy.

11 61. On or about March 8, 1993, O'Connor filed a
12 complaint with the Department stating that Respondent American
13 United failed to return his premium refund.

14 62. In an examination under oath on March 23, 1993,
15 Respondent Dennis Walrath was requested to provide the
16 Department with a copy of its December agent statement from ISU
17 for O'Connor. To date, Respondent Dennis Walrath has not
18 complied with the Department's request.

19 63. To date, Respondent American United has failed to
20 return O'Connor's premium refund.

21 COUNT IX

22 64. On or about September 22, 1992, Emerald issued
23 check number 49698 to John Gehring ("Gehring") and Respondent
24 American United in the amount of \$208.63, which represented a
25 premium refund for automobile insurance underwritten by North
26 American.

27 65. On or or about September 28, 1992, Respondent
28

1 American United deposited check number 49698 into its bank
2 account.

3 66. Respondent American United failed to forward
4 Gehring his premium refund.

5 67. On or about March 22, 1993, Gehring filed a
6 complaint with the Department stating that Respondent American
7 United failed to return his premium refund.

8 COUNT X

9 68. In September, 1992, Billy R. Rubash ("Rubash")
10 purchased a motorcycle insurance policy for coverage for himself
11 and his son from Respondent American United.

12 69. In October of 1992, Rubash contacted Respondent
13 American United and requested that they delete his son from his
14 policy.

15 70. On or about December 8, 1992, Transwestern
16 General Agency processed the deletion and Respondent American
17 United was credited \$185.00 as return premium on its December
18 1992 statement from Transwestern.

19 71. Respondent American United failed to forward
20 Rubash his \$185.00 premium refund or credit his existing policy.

21 72. On or about April 21, 1993, Rubash filed a
22 complaint with the Department stating that Respondent American
23 United failed to return is premium refund.

24 73. To date, Respondent American United has failed to
25 return Rubash's premium refund.

26 COUNT XI

27 74. On or about November 6, 1991, Emerald issued
28 check number 27097 to Denise Adams ("Adams") and Respondent

1 American United in the amount of \$158.66, which represented a
2 premium refund for automobile insurance underwritten by
3 Industrial Fire & Casualty Insurance Company.

4 75. Respondent American United failed to forward
5 Adams her refund.

6 76. On or about March 18, 1993, Adams filed a
7 complaint with the Department stating that Respondent American
8 United failed to return her premium refund.

9 77. On or about April 14, 1993, the Department sent
10 an inquiry to Respondent Dennis Walrath and Respondent American
11 United regarding Adams' complaint which required a response by
12 May 11, 1993. Respondents failed to respond.

13 COUNT XII

14 78. In January of 1993, Respondent American United
15 received a check in the amount of \$138.00 from Jean Simeone
16 ("Simeone") as a premium down payment for renewal of her
17 automobile insurance underwritten by Phoenix Indemnity Insurance
18 Company.

19 79. On or about January 27, 1993, Respondent American
20 United issued check number 025241 to Statewide Insurance
21 Co./Phoenix Indemnity Insurance Co. in the amount of \$18.00 as
22 premium down payment for Simeone's renewal. That check was
23 returned by the bank marked, "NSF".

24 80. On or about March 10, 1993, Statewide notified
25 Simeone that the policy had been cancelled due to "NSF Check-Not
26 Honored by Bank".

27 81. To date, Respondent American United has failed to
28 reimburse Simeone her premium refund.

1 82. On or about March 23, 1993, Simeone filed a
2 complaint with the Department stating that Respondent American
3 United failed to return her premium refund.

4 CONCLUSIONS OF LAW

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

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

9 3. The Department has shown by substantial evidence
10 that the conduct described in Counts IV, V, VIII, IX, X, XI and
11 XII by Respondent American United constitutes misappropriation,
12 conversion, or illegal withholding of monies belonging to
13 policyholders, insurers, beneficiaries or others in violation of
14 A.R.S. §20-316(A)(4).

15 4. The Department has shown by substantial evidence
16 that the conduct described in Counts I, II, III, IV, V, VII,
17 VIII, IX, X, XI and XII by Respondent American United
18 constitutes conduct of affairs under its license showing it to
19 be incompetent or a source of injury and loss to the public or
20 any insurer, in violation of A.R.S. §20-316(A)(7).

21 5. The Department has shown by substantial evidence
22 and legal argument that the conduct described in Counts II, III,
23 IV, V, VI, VIII, IX, X, XI and XII by Respondent Dennis Walrath
24 constitutes a conduct of affairs under his license showing him
25 to be incompetent or a source of injury and loss to the public
26 or any insurer, in violation of A.R.S. §20-316(A)(7).

27 Specifically, Respondent Dennis Walrath, as the sole owner and
28 sole director of Respondent American United, had a legal

1 obligation to monitor and manage the affairs of Respondent
2 American United. Due to Respondent Dennis Walrath's lack of
3 control and management many policyholders were harmed by late
4 return of monies due them. Further in seven instances the
5 policyholders have not received their refunds.

6 6. The Department has shown by substantial evidence
7 that Respondent Samden is subject to suspension or revocation of
8 its license, at the Director's discretion, for the acts of
9 Respondent Dennis Walrath, pursuant to A.R.S. §20-316(B).

10 IT IS HEREBY ORDERED that:

11 1. All insurance licenses held by Respondent American
12 United are immediately revoked.

13 2. All insurance licenses held by Respondent Dennis
14 Walrath are immediately suspended for a period of twelve months.

15 3. Respondent Dennis Walrath shall make restitution
16 in the listed amounts to the following:

17	a. Laura Entrekin	\$253.97
18	b. Angie Hennessy	74.56
19	c. Dennis O'Connor	172.00
20	d. John Gehring	208.63
21	e. Billy Rubash	185.00
22	f. Denise Adams	158.66
23	g. Jean Simeone	138.00

24 Respondent Dennis Walrath shall pay the total restitution in the
25 amount of \$1,190.82 directly to the applicable parties. The
26 addresses are attached to this Order. Proof of payment shall be
27 sent to the Department by March 15, 1994.

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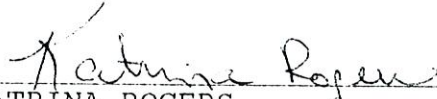
1 4. Respondent Dennis Walrath shall pay the Department
2 \$2,500.00 as a civil penalty on or before March 15, 1994.

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

8 DATED this 26th day of January, 1994.

9
10 

11 _____
CHRIS HERSTAM
Director of Insurance

12
13 

14 _____
KATRINA ROGERS
Chief Hearing Officer

15 COPY of the foregoing mailed/delivered
16 this 26th day of January, 1994, to:

17 Gay Ann Williams, Deputy Director
18 Charles R. Cohen, Executive Assistant Director
19 Jay Rubin, Assistant Director
20 Arnold Sniegowski, Investigator
Maureen Catalioto, Supervisor
Department of Insurance
2910 N. 44th Street, Suite 210
Phoenix, Arizona 85018

21 Kathryn Leonard
22 Assistant Attorney General
1275 W. Washington
Phoenix, Arizona 85007

23 Samden, Inc., dba
24 Great Rate Insurance
244 N. Country Club, #210
25 Mesa, Arizona 85211

26 Great Rate Insurance
27 325 E. Southern
Tempe, Arizona 85282

28

- 1 Great Rate Insurance
4355 W. Indian School Road
2 Phoenix, AZ 85031
- 3 American United Insurance, Inc.
4 512 E. Southern, #C
Tempe, AZ 85282
- 5 American United Insurance, Inc.
6 6040 N. 7th Street
Phoenix, AZ 85016
- 7 Dennis Owen Walrath
8 740 E. Hermosa
Tempe, Arizona 85282
- 9 Sandra Kay Walrath
10 740 E. Hermosa
Tempe, Arizona 85282
- 11 Century-National Insurance Company
12 P.O.Box 3999
North Hollywood, CA 91609
- 13 Rick Liddle
14 Economy Preferred Ins. Co.
500 Economy Court
15 Freeport, IL 61032
- 16 Thomas Hennessy
17 Golden Rule Insurance Co.
712 Eleventh Street
Lawrenceville, IL 62439
- 18 Midland Risk Insurance Co.
19 825 Crossover Lane, Suite 112
Memphis, TN 38117-4936
- 20 Nova Casualty Co.
21 180 Oak Street
Buffalo, NY 14203
- 22 Sutter Insurance Company
23 P.O. Box 6000
Larkspur, CA 94977-6000
- 24 Coronet Insurance Co.
25 c/o Insurance Service Underwriters of the Southwest
8723 E. Via De Commercio
Scottsdale, AZ 85258
- 26 Empire Fire & Marine Ins. Co.
27 1624 Douglas Street
Omaha, NE 68102
- 28

1 Merit Insurance Company
2 c/o Skyway Management
3 P.O. Box 4490
4 Scottsdale, AZ 85260-4490

5 Northland Insurance CO.
6 P.O. Box 64816
7 St. Paul, MN 55164-1146

8 Safeway Insurance Company
9 500 S. Racine Avenue
10 Chicago, IL 60607

11 Time Insurance Company
12 515 West Wells
13 Milwaukee, WI 53201

14 Valley Forge Life Insurance Company
15 CNA Plaza
16 Chicago, IL 60685

17 Western Surety Company
18 P.O. Box 5077
19 Sioux Falls, SD 57117-5077

20 Statewide Insurance Corp.
21 P.O. Box 52048
22 Phoenix, AZ 85072

23 Kelly Kassa
24 2011 N. Lazona
25 Mesa, AZ 85203

26 David Seivert
27 1134 N. 87th Street
28 Scottsdale, AZ 85257

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Angie Hennessy
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Mesa, AZ 85206

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Marjorie Morale
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Glendale, AZ 85308


Chris Crawford