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October 13, 2003

****SENT BY FACSIMILE & FIRST CLASS MAIL****

Judge Patricia Petersen
Office of Insurance Commissioner
PO Box 40255
Olympia, WA 98504

RE: In the Matter of Jack Chandler, No. 2002-152, OAH Docket No. 2002-INS-0003
Petition for Review of Initial Decision and Order

Dear Judge Petersen:

On September 26, 2003, Administrative Law Judge (ALJ) Adam Torem of the Office of Administrative Hearings (OAH) issued an initial decision and order *In the Matter of: Jack Chandler, Licensee*, No. D 2002-INS-152, OAH Docket No. 2002-INS-0003. ALJ Torem reversed the administrative order issued by the Office of the Insurance Commissioner (OIC) revoking the insurance license of Mr. Chandler. The OIC issued the revocation order on the grounds, among others, that Mr. Chandler is incompetent, or untrustworthy, or a source of injury and loss to the public. The conduct that gave rise to the revocation order involved sales or attempted sales to elderly consumers of living trusts, reverse mortgages, securities, and insurance. The OIC's order was also based on Mr. Chandler's failure to maintain a current address with the OIC and failure to reveal prior complaints on his license application.

The OIC seeks review of the ALJ's initial order pursuant to RCW 34.05.464. A general summary of the grounds for review is as follows. The ALJ arbitrarily rejected or discounted undisputed testimony on key issues of fact. Certain facts found by the ALJ are not supported by the evidence in the record. Certain conclusions made by the ALJ are contrary to the facts found by the ALJ or are not supported by the evidence in the record. Finally, the ALJ did not follow the appropriate standard in determining whether Mr. Chandler's conduct showed him to be incompetent, untrustworthy, or a source of injury or loss to the public.

The record is substantial and consists of numerous exhibits and multiple days of testimony. Consequently, I am requesting that a schedule be established so that the parties may fully brief the issues and provide references to the record. I understand from your assistant that you will not be returning to the office until Wednesday, October 15, 2003, and respectfully request that a teleconference be scheduled for that date with counsel so that briefing dates may be established.

Thank you for your consideration of this matter.

Very truly yours,

Melanie deLeon

Melanie deLeon
Assistant Attorney General

cf
cc: Tom Talarico
John J. Tollefsen

MIKE KREIDLER
STATE INSURANCE COMMISSIONER

STATE OF WASHINGTON

OFFICE OF
INSURANCE COMMISSIONER

Phone: (360) 725-7000

DECLARATION OF MAILING
I declare under penalty of perjury under the laws of the State of Washington that on the date listed below, I mailed or caused delivery of a true copy of this document to

DATED this 18 day of JUNE, 2004
at Tumwater, Washington.
Signed: _____

FILED
JUN 18 2004
Hearings Unit, OIC
Patricia D. Petersen
Chief Hearing Officer

In the Matter of:	)	Docket No. D 2002-152
	)	
JACK CHANDLER,	)	**REVIEW DECISION AND**
	)	**FINAL ORDER**
Licensee.	)	
	)	

TO: Mr. Jack Chandler
P.O. Box 153
Edmonds, WA 98037

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18225 8th Place West
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COPY TO: Melanie DeLeon, Assistant Attorney General
Mike Kreidler, Insurance Commissioner
Michael G. Watson, Chief Deputy Insurance Commissioner
J. Scott Jarvis, Deputy Commissioner, Consumer Protection
Carol Sureau, Deputy Commissioner for Legal Affairs

Pursuant to RCW 34. 05.461(3), the parties are advised that they may seek reconsideration of this Order by filing a request for reconsideration under RCW 34.05.470 with the undersigned within 10 days of the date of service (date of mailing) of this Order. Further, the parties are advised that, pursuant to RCW 34.05.514 and 34.05.542, this Order may be appealed to Superior Court by, within 30 days after date of service (date of mailing) of this Order, 1) filing a petition in the Superior Court, at the petitioner's option, for (a) Thurston County or (b) the county of the petitioner's residence or principal place of business; and 2) delivery of a copy of the petition to the Office of the Insurance Commissioner; and 3) depositing copies of the petition upon all other parties of record and the Office of the Attorney General in the United States mail. If a party chooses to file a petition in the Superior Court, he or she may, but is not required to, first file a request for reconsideration. For further information or to obtain copies of the applicable statutes, the parties may contact Christopher Baldwin, Administrative Assistant to the undersigned, at the above address or (360) 725-7002.

NATURE OF PROCEEDING

On October 11, 2002, Jack Chandler (Licensee) filed his Demand for Hearing in this matter to contest the Insurance Commissioner's (OIC) Order Revoking License. Said Order Revoking License, which was entered by the OIC on September 26, 2002 and by its terms was effective October 16, 2002, revoked the insurance agent's license of the Licensee.

Because, in his Demand for Hearing, the Licensee asked that the administrative hearing be held by an administrative law judge in the Office of Administrative Hearings (OAH), the case was transferred to the OAH and the services of an administrative law judge in that agency were retained. Subsequently, an Initial Decision and Order (Initial Decision) were entered by OAH on September 26, 2003, and said Initial Decision was transmitted to the undersigned Review Judge for review, consideration and entry of Final Findings of Facts, Conclusions of Law and Order on Hearing. Subsequently, as permitted by RCW 34.05.461(8)(a), the undersigned did waive the statutory deadline for entry of the Final Findings of Facts, Conclusions of Law and Order, for good cause shown, specifically, for a significant lack of administrative support since receipt of the Initial Order.

REVIEW JUDGE'S CONSIDERATION

1. Review. This matter has properly come before the undersigned Review Judge to review the Initial Decision entered by the OAH on September 26, 2003.

2. Record of Proceeding. The entire record of this proceeding was presented to the undersigned Review Judge for her review and entry of Final Findings of Facts, Conclusions of Law and Order.

3. The Insurance Commissioner's Petition for Review. In addition to the automatic review given to all initial decisions entered relative to appeals to the OIC, in the proceeding herein, the OIC, during posthearing conference which included the parties and the undersigned, requested the opportunity to file a posthearing brief prior to the undersigned commencing review of the Initial Decision. During said posthearing conference dates for filing briefs were set and, accordingly, the OIC filed its Memorandum in Support of Petition for Review on November 10, 2003, the Licensee filed his Licensee's Response to Commissioner's Petition for Review on December 4, 2003 and the OIC filed its Office of the Insurance Commissioner's Reply on December 16, 2003. The parties indicated that they did not wish to present oral argument prior to the undersigned's review of the Initial Decision.

4. General Comment on Review: Findings of Facts in Initial Decision: As indicated below, the undersigned determined not to adopt numerous of the "Findings of Fact" contained in the OAH's Initial Decision, as indicated below. The reason for this is that the majority of the "Findings of

Facts" in the Initial Decision are actually just mere recitations of testimony or recitations of the substance of complaints against the Licensee, or recitations of allegations made by the OIC or witnesses against the Licensee; they are not true findings of fact which have been adjudicated by the ALJ from OAH. Therefore, were this Review Judge to adopt them, they would fail to form an adequate basis for any Conclusions of Law. For this reason, this Review Judge has replaced the "Findings of Facts" in the Initial Decision with true findings of facts based upon the evidence presented at hearing. Finally, while in most situations the undersigned recognizes that it is preferable for a Review Judge to address each of OAH's findings of facts number by number, in this situation it appears to be less preferable 1) because the majority of OAH's "Findings" have had to be changed because they are not true findings of facts (per the discussion directly above); 2) because many of OAH's "Findings" contain lengthy recitations of portions of complaints or mere allegations which have now been removed herein, and therefore some have been simply eliminated and neither adopted nor substituted; and 3) because some of OAH's "Findings" include information concerning allegations which were not part of the OIC's Order Revoking License or Additional Grounds for Revocation to Supplement and Amend Order Revoking License and therefore those recitations of allegations should not have been considered by OAH at all and thus have been eliminated.

5. Second General Comment on Review: Findings of Facts in Initial Decision: Significantly, it should be noted that, if one assumes that the recitations of portions of complaints and allegations found in the Findings of Facts in the Initial Decision and the discussion of facts found in the Conclusions of Law in the Initial Decision (mentioned in the paragraph directly below) are the OAH's actual adjudicated findings of facts, this Review Judge has little disagreement with them. As indicated in this Review Decision and Final Order, this Review Judge has agreed with the vast majority of those "findings" in the Initial Decision.

6. General Comment on Review: Conclusions of Law in Initial Decision: The Conclusions of Law" in the Initial Decision are replete with recitations of facts, which should have been included as findings of facts and not as conclusions of law. Additionally, in some of OAH's Conclusions of Law, were the included facts to be considered the facts upon which the conclusion is based, OAH has not correctly applied the pertinent statutes to these facts. For these two reasons, this Review Judge has modified and/or substituted, as specifically indicated herein, many of the Conclusions of Law in the Initial Decision. The result of these changes is that they dictate a different disposition of this case, as reflected in the Final Order.

7. Second General Comment on Review: Conclusions of Law in Initial Decision Regarding Standard to be Applied to Licensee's Conduct: In the Initial Decision, OAH applied an incorrect standard in determining the trustworthiness of an insurance agent. The business of insurance is a highly regulated industry affected by the public interest, "requiring that all persons be actuated by good faith, abstain from deception, and practice honesty and equity in all insurance matters. RCW 48.01.030. Insurance agents have a "duty of preserving inviolate the integrity of

insurance." *Id.* The Commissioner is given broad authority to regulate the insurance industry in a manner that protects the public interest and to ensure that those persons given the privilege of an insurance license will fulfill their duty. See National Federation of Retired Persons v. Insurance Commissioner, 120 Wn.2d 101, 109; 838 P.2d 680, 684 (1992). In the Initial Decision, the ALJ applied what he considered to be the rule of the marketplace, as he stated: "the law of caveat emptor." [Initial Decision at 46.] The Initial Decision places little or no burden on the Licensee to act in a fair and forthright manner, while placing the entire burden on the elderly consumers to protect themselves against being misled and injured by the actions of the Licensee. The statutory requirement of integrity, honesty and equity under RCW 48.01.030 has been construed by the appellate courts of Washington State with respect to the conduct of insurers, and has equal applicability to insurance agents and all other persons who engage in or seek to be engaged in insurance matters. There is a fiduciary relationship between an insured and the insurance agent that requires not only "honesty and lawfulness of purpose" but also a "broad obligation of fair dealing." *See* Tank v. State Farm Fire and Casualty Company, 105 Wash.2d 381, 385-86; 715 P.2d 1133, 1136 (1986). Additionally, the responsibility of an agent to act fairly and honestly is heightened where, as in this case, the agent represents himself as a specialist interested in providing his clients "their options…to better handle life's certainties and uncertainties." [Ex. 73 at 1; *see, e.g.*, AAS-DMP Management, L.P. Liquidating Trust v. Acordia Northwest, Inc.,115 Wn.App. 833, 839-40, 63 P.3d 860 (2003). It is this standard, and not the law of the marketplace which the ALJ applies in the Initial Decision, which is the clear, well established standard against which the Licensee's conduct must be judged.

8. The undersigned Review Judge has carefully reviewed the entire hearing file, including all documents and exhibits filed therein, the tape recording of the proceeding, the OIC's briefs assigning error to the Initial Decision and the Licensee's brief supporting the Initial Decision.

FINDINGS OF FACTS

Having considered the evidence and arguments presented at the hearing, the documents on file herein, and the subsequent briefs filed by both parties before the undersigned, the undersigned duly appointed Review Judge makes the following findings of facts:

1. The Licensee is a 50 year old man who, until 2001, was a resident of California. He held a California insurance agent's license and worked as an insurance agent there until he surrendered that license in 2001. He is now a resident of Washington. The Licensee's primary insurance clientele has always been senior citizens. Throughout his career as an insurance agent, the Licensee has made it a normal practice to meet with senior in their homes. In addition to selling insurance products, the Licensee offers estate planning services to his clientele, including long term care insurance products, living trusts and reverse mortgages. [Exs. 29, V, W.]

2. As a means of making contact with potential clients, the Licensee has used leads cards.

Generally, lead cards are mailed to prospective clients, advertising access to some information or service. When the recipient mails back the card, the card is sold to an insurance agent (or the insurance agent has paid for the mailing of these cards initially) and the insurance agent then calls at the home of the recipient/prospective client. Often, the insurance agent then takes that opportunity to attempt to sell the recipient/prospective client other insurance products (long term care insurance, etc.) or other noninsurance products (living trusts, reverse mortgages, etc.), or to provide other information, in addition to that which has been advertised in the lead cards to which the recipients have responded.

3. In one of these lead card efforts, the Licensee arranged with a Texas company to mass mail some 128,000 lead cards to seniors in King and Snohomish Counties, which advertised the availability of a possible property tax exemption or federally insured reverse mortgage programs. Interested seniors were to complete the card and mail it back to the Texas company which then refers them on to the Licensee. The Licensee then arranged to come to the seniors' homes to sell them insurance or other products. [Testimony of Licensee; Testimony of Tom Talarico; Testimony of Debby Sundheim; Exs. M, N, AK, AL, AM, AN, AP.]

4. Insofar as it pertinent hereto, the Licensee has also used lead cards advertising the availability of information concerning living trusts. [See Johnson facts below.]

5. During the course of his career, the Licensee has created, with another individual, several limited liability corporations, including The Life Insurance Store, Inc., Senior Loan Center, LLC, and The Centre, LLC (also known as the Centre for Living Trusts) [Exs. 12, 13, 70] and another organization entitled Elder Planners of Washington. The Licensee represents himself as an "elder planner," who helps "seniors understand their options by intertwining the benefits available from…government entities along with the private sector, such as insurers…to better handle life's certainties and uncertainties." [Ex. 73 at 1, Ex. 73, 74, 75.] Thus, the Licensee acknowledges that he offers to assist seniors in getting property tax exemptions as a "gimmick" to allow him access to seniors' homes and the opportunity to evaluate them for other potential sales. [Testimony of the Licensee.]

6. In November 1999, the Licensee completed a Washington State application for an individual nonresident insurance agent's license. [Ex. 1.] In March 2001, the Licensee completed a Washington State application for an individual resident insurance agent's license. [Ex. 67.] On both Washington applications, which were in due course granted by the Washington Office of the Insurance Commissioner (OIC), the applicant is asked: Have any complaints been filed against you with any Insurance Department? The Licensee responded No to this question on both applications, and then signed the applications, certifying that the information was true and complete when he knew that his responses to this question was false.

7. In fact, on April 13, 2000, the Consumer Services Division of California's Department of

Insurance (Cal Insurance) wrote to the Licensee informing him that an elderly consumer had filed a request for assistance, claiming that the Licensee had refused to return various documents regarding a living trust. Cal Insurance instructed the Licensee to respond directly to the consumer's "complaint" and noted that he would not hear from Cal Insurance again unless the agency determined that the consumer's complaint was justified. [Ex. 65, page 1.]

8. Further, although the Licensee had never been involved in any "formal disciplinary action resulting in administrative penalties," in California, he had been the subject of eight investigations conducted by Cal Insurance, five of which were the result of citizen complaints. Four of these cases were closed with a "field warning given to the Licensee." [Exs. AI, 2, 49, 64, AW, AX.]

9. On February 15, 2002, the OIC opened an investigation into some of the Licensee's activities. In the course of the investigation, the OIC mailed the Licensee written inquiries to his current registered address (707 6th Avenue south, Edmonds, WA 98020) on February 21 and 25, 2002 and March 13 and 22, 2002. All of these letters were return, separately, marked by the U.S. Postal Service as "Chandler, Jack Moved Left No Address Unable to Forward Return to Sender." [Exs. 52, 54, 61-63.] The Licensee failed to promptly respond to these letters. There was insufficient evidence presented to show exactly where the Licensee's residence was during this period.

10. Betty Husby is an approximately 77 year old woman who resides in Everett, Washington. Ms. Husby had responded to a lead card advertising information about living trusts. In response, on February 5, 2002, Micky Larson, an associate of the Licensee, came to her home. The Licensee had conducted research into Ms. Husby's property, accessing public records to confirm property ownership and any existing liens. [Ex. 38.] Mr. Larson advised Ms. Husby that he was helping senior citizens pay fewer taxes, and she let him inside. Mr. Larson showed Ms. Husby a copy of her county property assessment record and said that he would return. On February 12, 2002, Mr. Larson and the Licensee returned to Ms. Husby's home. The Licensee talked with Ms. Husby for some two hours, and attempted to sell her a reverse mortgage so that, he advised, she could have more income and pay fewer taxes. Ms. Husby advised the Licensee that she was not interested in a reverse mortgage. At that point, the Licensee became agitated and when she refused to sign some papers he put in front of her, the Licensee stood over Ms. Husby and said "I'm not losing my commission.... You're going to sign this." Ms. Husby was alone with these two men, felt threatened and feared for her physical safety. Ms. Husby reluctantly signed the paper. The Licensee then put two more pages in front of her and told her to sign them as well, which she did out of fear. The Licensee then took the papers Ms. Husby had signed, leaving no copies at all and advised her he would return the following week. [Ex. AB; Ex. 19; Testimony of Ms. Husby.] Ms. Husby then contacted a friend, John Galt, who contacted the Licensee and hold him not to return to her home, served papers upon the Licensee rescinding any transaction which he might have entered into and who proceeded to investigate the Licensee, which eventually

culminated in Ms. Husby filing a complaint with the OIC. [Ex. 19; Testimony of Betty Husby.] In regard to the OIC's allegation against the Licensee relative to the Husby transaction, Ms. Husby's complaint filed with the OIC, her subsequent deposition testimony and her testimony at hearing are all quite consistent.

11. Bill and Evelyn Kristjanson (Kristjansons) are a married couple who are each over 80 years old. Bill Kristjanson, at least, has a difficult time with memory loss and understanding financial documents. [Ex. AC, pp.10-11.] While getting out of the car to attend and testify at the hearing herein, Mr. Kristjanson fell and injured himself and so neither he nor his daughter, Phyllis, were able to testify herein. However, Mr. Kristjanson did provide deposition testimony earlier and Phyllis' complaint to the OIC was included as evidence herein. In the summer of 2001, the Licensee sold the Kristjansons a will and living trust for approximately $8900. A few months later, the Licensee returned to sell long-term care coverage for Evelyn Kristjanson. The payment for the long-term care coverage was to come from a reverse mortgage on their home. When Phyliss Kristjanson discovered this, her husband (a former OIC examiner) called the Licensee that the reverse mortgage transaction was to be cancelled and requested that, because the elder Kristjansons experience memory loss and confusion, he not directly contact the elder Kristjansons further, but instead work through Phyliss or himself. In January 2002, Phyliss Kristjanson discovered that the Licensee had returned to her parents' home with the intention of selling the long-term care coverage via a reverse mortgage. Phyliss Kritjanson advised the Licensee again not to contact her parents, but, a few hours later, she discovered that the Licensee had again contacted her parents against her wishes. The Licensee stated that he believed that the Kristjansons were competent to conduct an estate planning transaction with him and explained that he would not honor Phyllis Kristjanson's request to provide her with her parents' document because he honors his clients' right to privacy. [Exs. 14, 15, 16, AC (condensed deposition of Kristjanson), X (condensed deposition of Mr. Talarico).] Given the specific situation concerning the Kristjansons, the Licensee's activities found herein demonstrate that he is untrustworthy.

12. Very similar facts to those set forth directly above regarding Kristjanson were presented, and were the subject of Findings of Fact in the Initial Decision, concerning the Hill/Patterson transaction involving the Licensee. However, because this matter was not alluded to in the Order Revoking License or Supplemental Order, they were not considered by the undersigned.

13. The OIC also presented facts involving Pritchett and Great Republic Life in its case against the Licensee, and were the subject of several Findings of Facts in the Initial Decision. However, because this matter was not alluded to in the Order Revoking License or Supplemental Order, they were not considered by the undersigned.

14. In January 2002, Harold and Juanita Boeckel (Boeckels), elderly Washington residents, contacted the Licensee to update their living trust. [Ex. 21.] The Licensee convinced them that it would be easier to create a new one and charged them $965 to do so. [Ex. 21.] The Licensee

drafted the new trust document, and when the Boeckels received it, they discovered many errors: Mr. Boeckel's first name was misspelled several times, two of their daughters were disinherited, monies previously given to their children were shown as loans instead of gifts, and the Licensee had inserted himself as an alternate Trustee, alternate Executor, and alternate Attorney-in-Fact and notarized the trust documents himself after bringing his own witnesses (two of his business associates, DeRenzo and Larson) to serve as witnesses even though Mr. Boeckel had already arranged for his neighbors to witness his documents. [Ex. AD, p. 18, 1.21.]Mr. Boeckel never indicated that he wanted the Licensee to be the alternate executor of his will nor give him power-of-attorney over his assets. [Ex. AD; Ex. 21, 31-35.] When the Boeckels were unable to have the Licensee correct the Trust, they sought the assistance of another attorney and for an additional $280 made the necessary changes. [Ex. 21.] The Licensee also tried to sell them annuities, but when they told him they were not interested in buying the annuities, the Licensee persisted in attempting to sell them and eventually became angry and intimidating to the Boeckels. [Exs. 21, 22 and AD.] The Licensee's activities in regard to the Boeckel transaction demonstrate that he is untrustworthy and a source of injury and loss to the public.

15. Prior to May 2002, the Licensee entered into an agreement with Alpha Telcom to sell, and subsequently did sell, public-use pay telephones and telephone services to senior citizens on behalf of Alpha Telcom. [Exs. X, 3, AB1.] The "investor" was to receive 30% of the adjusted gross revenue generated by the telephones, or a monthly base amount of $46.67 per $4,000 telephone purchased or $58.34 per $5,000 telephone purchased, which equated to a 14% annual return. [Ex. 3.] The Licensee was not licensed as a securities agent to sell these securities.

16. As a result of his activities regarding Alpha Telcom, the Washington State Department of Financial Institutions (DFI), Securities Division, issued a Cease and Desist Order, SDO-9-02 against the Licensee and other individuals based upon its determination that the Licensee had engaged in offering and/or selling securities without a Washington securities license. On May 22, 2002, the Licensee agreed to a Consent Order, SDO-48-02 with DFI vacating Order No. SDO-9-02 and agreed to pay DFI $7,500 for its costs incurred in its investigation of the matter. The Licensee further agreed that, based on the Findings of Fact and Conclusions of Law, he would be subject to a fine in the amount of $50,000 with the entire amount suspended based on future compliance with DFI's Order. In the event of a violation of the Order, DFI will seek enforcement of the Order pursuant to RCW 21.20.395.

17. Eileen Johnston, a 75 year old widow, was visited by the Licensee in her home after she had mailed in a lead card requesting information on living trusts. As Ms. Johnston had limited financial resources, the Licensee set up a reverse mortgage and sold her $55,000 investment in Alpha Telcom paid out of the proceeds of the reverse mortgage. As a result, Ms. Johnston filed for bankruptcy and expected to lose her home of 50 years. [Ex. 5.]

18. The Licensee's activities relative to Alpha Telcom demonstrate that he is untrustworthy and a source of injury and loss to the public, which bear on his qualifications to be an insurance agent.

19. As found in Findings of Facts 2 and 3 above, the Licensee uses a direct marketing service to mail postcards to senior citizens regarding the possibility of a senior citizen property tax exemption, and listed his identity as "Chandler and Assoc., Everett, WA; or "information provided by www.epwa.org," referring prospective clients to his "Elder Planners of Washington web site. [Exs. 58 and 59.]. These mailers were confusing consumers and many consumers believed that the cards were being sent to the county assessors' offices. [Testimony of Tom Talarico; Testimony of Debby Sundheim of Snohomish County Assessor; Exs. 10 and AA.] Further, there is no indication a response to this card will result in a visit from an insurance agent who will likely attempt to sell the senior insurance products and/or reverse mortgages, living trusts and the like. Additionally, the Office of the Attorney General, Consumer Protection Division performed an investigation into the Licensee's use of these lead cards [Ex. 57.] and found that these mailers were misleading. As a result, on May 7, 2003, the Attorney General issued a consumer alert to warn consumer of the Licensee's direct mail solicitation. [Ex. 36.] These mailings were, indeed, misleading and deceptive. Further, the Licensee used these marketing cards as a "gimmick" [Testimony of the Licensee] to get his foot in the door of elderly consumers' homes to then sell them other products such as reverse mortgages, living trusts, long term care and other insurance policies. [Ex. AA, 19.] Based upon this finding that these specific marketing cards are misleading and deceptive, the Licensee's use of these specific cards demonstrates that the Licensee is untrustworthy, which bears upon his qualifications to act as an insurance agent.

20. Based upon the above activities, the Licensee has demonstrated himself to be, and is hereby deemed to be, untrustworthy and a source of injury and loss to the public.

21. The OIC's Order Revoking License entered September 26, 2002, as supplemented by Additional Grounds for Revocation to Supplement and Amend Order Revoking License entered by the OIC on December 30, 2002, which revokes the insurance agent's license of Jack Chandler, is reasonable under the circumstances and should be confirmed.

CONCLUSIONS OF LAW

1. The Administrative Law Judge from the Office of Administrative Hearings had jurisdiction over the parties and subject matter herein and authority to enter the Initial Decision herein, pursuant to RCW 48.04.010(5), Chapter 34.05 RCW, and Chapter 34.12 RCW. Pursuant to RCW 48.04.010, Chapter 34.05 RCW and Chapter 34.12 RCW, and delegation of authority from the OIC, the undersigned Review Judge has jurisdiction over the parties and subject matter herein to review the entire hearing file and to enter the final decision herein.

2. The undersigned recognizes that there is currently in Washington State some uncertainty in case law concerning whether the preponderance of the evidence standard of proof or the clear and convincing standard of proof applies to professional licensing cases. In recognition that current case law has not reiterated either the historically established standard of proof which has applied to insurance agents licensing cases (preponderance of the evidence) or the new, higher, standard of proof which has been recently applied to medical doctors (clear and convincing evidence), the undersigned has applied both standards of proof in this case. The undersigned has determined that, upon applying either of the two standards, the OIC has met its burden of proof as to the violations found herein.

3. As found above, in his Washington applications for a nonresident and then a resident insurance agent's license, the Licensee failed to disclose complaints which had been filed against him with the California Insurance Department, when he knew of the existence of these complaints. In so doing, he violated RCW 48.17.070 and obtained or attempted to obtain his insurance agent's licenses through willful misrepresentation or fraud as contemplated by RCW 48.17.530(1)(c).

4. Based upon the facts found above, it cannot be concluded that the Licensee failed to promptly notify the Commissioner of a change of residential or business address in violation of RCW 48.17.450. As a result, it cannot be concluded that the Licensee failed to respond promptly in writing to the Commissioner in violation of RCW 48.17.475.

5. In the Initial Decision, the OAH dismissed the above facts concerning the Husby transaction, on the basis that Ms. Husby's testimony was not credible in that it was not consistent with the complaint she had previously filed with the OIC and was not consistent with her deposition testimony. The undersigned concludes that Ms. Husby's complaint, deposition and testimony at hearing are, indeed, remarkably consistent and therefore that the OAH's disregard of Ms. Husby's testimony was in error. Should the ALJ have disregarded Ms. Husby's testimony based upon demeanor, however, the undersigned would have deferred to that judgment. Such was not the case here, however, and the undersigned concludes that the testimony of Ms. Husby was consistent and therefore should not have been disregarded.

6. Based upon the above Findings of Facts concerning the Licensee's activities involving Betty Husby, the Licensee has demonstrated that he is untrustworthy as contemplated by RCW 48.17.530(1)(h).

7. It should be noted that, as argued by the OIC, there need not be a regulation which requires an insurance agent to include potential insureds' children (upon request) in insurance transactions to render it a violation if they are not included. Indeed, such a regulation would not be reasonable. Instead, as argued by the OIC, well established case law dictates that each situation be evaluated

as to whether the insurance agent's actions are trustworthy or not. In this situation, with the fact, found above, that at least Bill Kristjanson suffered from memory loss and confusion, and given the other facts surrounding this transaction, the Licensee's actions in not ensuring that the children were included, the Licensee has demonstrated that he is untrustworthy as contemplated by RCW 48.17.530(1)(h).

8. The OIC's charges against the Licensee concerning the Alpha Telcom matter was dismissed in error. The action taken against the Licensee by the Washington Department of Financial Institutions, which determined that he had engaged in offering and selling securities without a securities agent's license, bears on his trustworthiness to be an insurance agent. For this reason, it is here concluded that the facts, found above regarding the Licensee's activities relative to Alpha Telcom and the Washington Department of Financial Institutions, and which include the Johnson matter, demonstrate that he is untrustworthy and a source of injury to the public as contemplated by RCW 48.17.530(1)(h).

9. At the close of the OIC's case-in-chief, the OAH dismissed the charges concerning the Boeckel matter on the basis that he did not find that the Licensee's conduct was untrustworthy. These charges were dismissed in error. Based upon the facts found above, which are fairly consistent with the OAH's discussion in the Initial Decision, the undersigned concluded that, in his activities relative to the Boeckel matter, the Licensee demonstrated that he is untrustworthy and a source of injury and loss to the public as contemplated by RCW 48.17.530(1)(h).

10. Based upon the facts found above, the Licensee's use of the subject marketing cards which concerned possible property tax exemptions which were the subject of County Assessors' complaints and were the subject of the Attorney General's consumer warning, and which were found above to be misleading and deceptive, demonstrate that he is untrustworthy as contemplated by RCW 48.17.530(1) (h).

11. Based upon the above conclusions of law, to the effect that the Licensee has failed to disclose in his Washington insurance agent's license applications that eight complaints had been filed against him in California in violation of RCW 48.17.070 and RCW 48.17.530(1)(c), and to the effect that the Licensee has in many instances demonstrated himself to be, and has so deemed to be, untrustworthy and a source of injury and loss to the public and not qualified to be an insurance agent in the state of Washington as contemplated by RCW W48.17.530(1)(h), the Initial Decision in this matter should not be adopted and the OIC's Order Revoking License, No. D 02-152, as supplemented by Additional Grounds for Revocation to Supplement and Amend Order Revoking License, should be upheld.

FINAL ORDER

Based upon the above Findings of Fact and Conclusions of Law, to the effect that the Licensee has violated RCW 48.17.070, has willfully violated or knowingly participated in the violation of an provision of the Insurance Code as contemplated by RCW 48.17.530(1)(b), has obtained his insurance agent's licenses in the state of Washington through willful misrepresentation or fraud and has demonstrated himself to be untrustworthy and a source of injury and loss to the public as contemplated by RCW 48.17.520(1)(h), the Initial Decision entered in this matter is not adopted and the Insurance Commissioner's Order Revoking License, as supplemented by the Additional Grounds for Revocation to Supplement and Amend Order Revoking License, is hereby **UPHELD**.

This Order is entered pursuant to RCW 48.04, Title 48 RCW, Title 34 RCW, WAC 284 and WAC 10-08.

This Order is entered at Tumwater, Washington, this 18th day of June, 2004.

PATRICIA D. PETERSEN
Chief Hearing Officer
Review Judge