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STATE OF ALASKA
DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT
DIVISION OF INSURANCE

In Re:)
)
LICENSING APPLICATIONS OF)
ARMAND GUERRETTE and)
WILLIS CORROON MELLING, LTD.)
)
Respondents.)

Case No. LD95-01

Statement of Issues

Marianne K. Burke, Director, Division of Insurance ("the Division"), Department of Commerce and Economic Development, State of Alaska, states:

1. This is a proceeding under the Alaska Insurance code (AS Title 21) denying applications for insurance licenses required by AS 21.27.010.
2. Armand Guerrette ("Guerrette") is the senior vice president and branch manager of Willis Corroon Melling, Ltd., an insurance brokerage for all lines except life and disability, located in Edmonton, Alberta, Canada.
3. Guerrette was first issued a nonresident agent's license in Alaska on or about February 14, 1991 under license no. 82466. At that time, Guerrette was designated as principal in a firm for Richard Melling, Ltd., the predecessor company to Willis Corroon Melling, Ltd. Under a new licensing system adopted in 1992, the Division converted license

1
2 no. 82466 to license no. 6634.

3 4. The Division issued a firm license to Richard Melling, Ltd. on or about February
4 14,1991 under license number 82467. The Division converted this license to license no. 9493
5 under the new licensing system instituted in 1992.

6 5. On or about November 24, 1992, the Division learned that Richard Melling, Ltd.
7 had changed its name to Willis Corroon Melling, Ltd. ("Willis Corroon"). By letter dated
8 December 22, 1992, the Division informed Willis Corroon that, because of the name change,
9 it would need to take certain steps to comply with Alaska statutes as amended in 1992. The
10 Division received no response to this letter. Meanwhile, Guerrette and the firm failed to renew
11 their respective licenses and both licenses lapsed on February 14, 1993.

12 6. On or about March 1, 1993, the Division received the application to change the
13 name from Richards Melling, Ltd. to Willis Corroon. The Division subsequently advised
14 Willis Corroon that the firm's and Guerrette's licenses had lapsed and that the Division would
15 reinstate the licenses only upon completion of certain requirements including among other
16 things a statement of business transacted during the lapse period. Guerrette and the firm did
17 not meet all requirements for reinstatement until December 1993; accordingly, the Division
18 did not reinstate the licenses until January 5, 1994.

19 7. By letter dated January 7, 1994 from the Division, Willis Corroon and Guerrette
20 were reminded of the need to stay in compliance with Alaska's licensing laws and of the
21 possible consequences of violating any part of the Alaska insurance code. Despite this
22 reminder, Guerrette again failed to renew his license when required on April 16, 1994 and he
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continued to transact insurance in Alaska without a valid license.

8. On November 2, 1994, the Division sent Guerrette a notice advising him that his license no. 6634 had lapsed effective November 2, 1994 for failure to renew as required on or before April 16, 1994. Shortly after receiving this notice, Guerrette submitted a renewal application along with a Statement of Business transacted in Alaska for the period April 16, 1994 through November 18, 1994.

9. Willis Corroon also failed to renew its license on or before February 14, 1995 and was sent a lapse notice on February 14, 1995.

10. Guerrette and Willis Corroon violated AS 21.27.010, AS 21.27.370(b), AS 21.27.380(b), and AS 21.36.360(j) when they continued to transact insurance in Alaska after their respective licenses had lapsed. During the lapse period from February 14, 1993 through December 10, 1993, Guerrette and Willis Corroon placed insurance on Alaska risks with total gross premiums of \$103,106. During the lapse period from April 16, 1994 through November 18, 1994, Guerrette and Willis Corroon placed insurance on Alaska risks with total gross premiums of \$65,098. Willis Corroon earned 7% commission on these premiums. Transacting insurance without a valid license is grounds for denial, nonrenewal, suspension, or revocation of a license under AS 21.27.410 and for imposition of civil penalties under AS 21.27.440.

STATE OF ALASKA
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
DIVISION OF INSURANCE
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THEREFORE, the individual license application of Armand Guerrette and the firm application of Willis Corroon Melling, Ltd. appointing Gucrettc as its principal are denied.

DATED this 23rd day of March, 1995, at Anchorage, Alaska.

MARIANNE K. BURKE
Director
Division of Insurance

By *Thelma Snow Walker*
Thelma Snow Walker
Deputy Director

STATE OF ALASKA

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

BEFORE THE DIVISION OF INSURANCE

In the Matter of)
)
 Willis Corroon Melling, Ltd.,)
 Armand Guerrette,)
 Respondents.)
 _____)

Case No. LD95-01

AMENDED PROPOSED DECISION

Introduction

This Proposed Decision is submitted to the **Director of the Division of Insurance of the Department of Commerce and Economic Development**, (hereinafter "**Director**") pursuant to AS 21.06.070 through AS 21.06.240. In considering this Proposed Decision the Director is acting in an adjudicative (quasi-judicial) capacity and should be restricted in deliberations to the testimony, evidence and arguments presented at the hearing. The Director should not receive information from any source other than that found in the hearing record.

Procedural History

This proceeding was initiated by a Statement of Issues executed by the Deputy Director on March 23, 1995. The Statement of Issues generally alleged that **Armand**

Guerrette and Willis Corroon Melling, LTD., (hereinafter the "**Respondents**" or Respondent "**Guerrette**" or "**Willis Corroon**", respectively), had violated AS 21.27.010, AS 21.27.370(b), AS 21.27.280(b), and AS 21.36.360(j) when they allowed their respective licenses to lapse and continued to transact insurance after the lapse had occurred. Pursuant to the Statement of Issues the **Division of Insurance**, (hereinafter "**Division**" or "**DOI**"), denied the individual license applications of the Respondents and sought sanctions against the Respondents for their alleged statutory violations. On April 12, 1995 Linda Whan executed a Request for a Hearing and Notice of Defense on behalf of the Respondents.

This matter was referred to the Hearing Unit on April 17, 1995. The referral was received by the Hearing Unit on April 18, 1995. On April 24, 1995 the undersigned hearing officer was assigned to this proceeding and a prehearing conference was scheduled for May 9, 1995. The prehearing conference was rescheduled to, and held on, May 16, 1995. Pursuant to the prehearing conference the hearing in this matter was scheduled for June 27, 1995.

On June 26, 1995 the Respondents requested a continuance of the June 27th hearing because, among other reasons, Respondent Guerrette had been absent from the office for almost three weeks due to surgery. Because of the lateness of the continuance request, and the fact that the Division's primary witness, Insurance Licensing Supervisor Linda Brunette, had already traveled from Juneau to Anchorage, the direct testimony of Ms. Brunette was taken on June 27, 1995. To accommodate the Respondents the cross examination of Ms. Brunette, and the remainder of the hearing, were rescheduled to occur telephonically on August 11, 1995.

On the morning of August 11, 1995 the Respondents filed a copy of a letter they had sent to Signe Andersen, the Division's attorney which stated, in relevant part:

In response to your letter of August 10, 1995, received by fax, I am sorry that scheduling problems and absences which arose here during July precluded earlier communication with you.

I did extensively review the file, as time permitted, and found compliance with the Division's requirements for the renewal of Armand Guerrette's license (fax communication November 14, 1994 from Mary Joyce) when we received notice to do so. I did not view the inadvertent provision of a stale-dated supporting document as sufficient cause, within the meaning of 21.27.020, for denial of renewal. However, because we did not note the change in expiry date to April 1994 rather than February 1995, and did not receive the original renewal notice from the Division, we were apparently not in compliance with 21.27.380 with respect to Mr. Guerrette's license from April 16 to November 30, 1994.

My instructions were not to proceed further with a Hearing in this matter, but to attempt to resolve the matter if possible. If my understanding that we would attempt to do so without further hearing is incorrect, then we will have no alternative but to withdraw our Notice of Defense since we are not available to proceed today.

At the hearing the Respondents, based upon the information set forth in the foregoing letter, requested a further continuance. This request was denied by the undersigned hearing officer. Both parties presented oral argument and the record was left open to allow each side to present additional written argument as well.

At the hearing, and throughout this proceeding, the Division was represented by Assistant Attorney General Signe Andersen and the Respondents were represented by Linda J. Whan, LL.B. The following exhibits were admitted upon submission by the Division:

Ex. 1 Armand Guerrette Licensing File

- 1a November 2, 1994 Lapse Notice
- 1b April 16, 1994 Renewal Forms-including Statement of Business trans. 12/94
- 1c 92 Renewal Form
- 1d License #6634-Issue Date 1/5/94 Exp Date 4/16/94

Ex. 2 Willis Corroon Melling Licensing File

- 2a February 14, 1995 Lapse Notice and Renewal Forms
- 2b 11/6/92 DOI fax to Melling re License deficiencies
- 2c 11/24/92 WC fax to DOI re Guerrette Renewal
- 2d 12/18/92 or 12/22/92 DOI letter re firm name chg
- 2e 3/3/93 DOI letter to Melling re non-renewal
- 2f 3/19/93 VC fax to DOI re new application
- 2g 3/23/93 DOI letter to Guerrette re reinstatement
- 2h 4/9/93 DOI fax to Ak Nat'l re status of lapsed lic.
- 2i 5/23/93 WC letter to DOI re orig. docs. for renewal
- 2j 6/17/93 DOI fax to WC re license reinstatement
- 2k 8/5/83 WC fax to DOI re amended bond
- 2l 8/6/93 DOI fax to WC re license lapse/deficiencies
- 2m 11/5/93 DOI fax to WC re application amendment
- 2n 1/7/94 DOI letter to Guerrette re conseq. of viol.
- 2o Firm License #9493 issued 1/5/94, expir. 2/14/95
- 2q Statement of Bus. trans. 12/93
- 2r Firm application rec'd 6/10/93
- 2s Original Certificates rec'd 10/27/93
- 2t 92 Firm Ren'l Form rec'd 10/27/93
- 2u 1/3/94 WC fax re bond and bond forms rec'd 10/27/93
- 2v 92 Firm Renewal Form rec'd 8/26/92 w/deficiencies

Ex. 3 DOI Bulletin 92-1

Ex. 4 DOI Computer printer outs re license history

Ex. 5 DOI copy of 94 Individual Renewal Form Notice

The undersigned hearing officer having heard the testimony, examined the evidence, and considered the arguments of the parties hereby submits the following Findings of Fact, Conclusions of Law, Analysis, and Recommendation, to wit:

FINDINGS OF FACT

1. Respondent Guerrette is the Senior Vice President and branch manager of Willis Corroon Melling, Ltd., an insurance brokerage for all lines except life and disability, located in Edmonton, Alberta, Canada.

2. Respondent Guerrette was first issued a nonresident agent's license in Alaska on, or about, February 14, 1991 under license no. 82466. At that time Respondent Guerrette was designated as principal for the firm Richard Melling, Ltd., the predecessor company to Willis Corroon Melling, Ltd. Under a new licensing system adopted in 1992, the Division converted license no. 82466 to license no. 6634.

3. The Division issued a firm license to Richard Melling, Ltd. on or about February 14, 1991 under license number 82467. The Division converted this license to license no. 9493 under the new licensing system instituted in 1992.

4. The Alaska legislature in 1992 passed extensive changes to the licensing statutes that included a change in broker and agent classification to an insurance producer classification, the designation of a firm compliance officer, and a change to biennial renewals with a different renewal date for individuals. The renewal date for individual licensees became the licensee's birth date every odd or even year. The renewal date for firms became the original issue date every odd or even year. Under the new system, the renewal date for Respondent Guerrette became April 16 every even year because he was born in an even year. This meant that he was to renew in 1992, and would renew again on April 16 1994, April 16, 1996, April 16, 1998, etc. The firm (Respondent Willis Corroon) was to renew in 1992 and would renew again on February 14 in 1993 (because its license

was originally licensed in an odd year), February 14, 1995, February 14, 1997, etc.

5. The statutory licensing changes became effective July 1, 1992, and, therefore, the Division did not send renewal notices at the regularly scheduled time for June 30 renewals. Instead, the Division sent out renewal notices and a Bulletin (Ex. 3) on, or about, July 26, 1992, to all licensees including the Respondents. This bulletin explained in detail all licensing changes; provided examples of when licenses would renew, and outlined all the information that would now be required to renew a license. The renewal notice contained a checklist of all information that was required to complete the renewal. Because more information was required to issue licenses than was previously required, the Division allowed extra time for licensees to complete renewal forms and return required information to the Division.

6. The Division received the 1992 license renewal form and fees to renew the firm license for Richard Mellings, Ltd. on or about August 26, 1992, but the renewal package failed to supply all the required information as outlined in the bulletin and notice. The firm submitted no corresponding renewal package for Respondent Guerrette. (Ex. 2d.) On November 6, 1992, the Division sent a fax to the firm identifying deficiencies and asking questions concerning renewal of the licenses. (Ex. 2b.) By fax dated November 24, 1992, the firm submitted Respondent Guerrette's 1992 license renewal, stating that the certification would be mailed later, and acknowledging that all filing requirements were not sent in August 1992. (Ex. 2c.) This fax also indicated that the firm name had changed from Richards Melling, Ltd. to Willis Corroon Melling, Ltd..

7. By letter dated December 28, 1992 (Ex. 1a and 2d) the Division informed Respondent Willis Corroon that, because of the name change, it would need to take certain

steps to comply with Alaska statutes as amended in 1992. The Division received no response to this letter. Meanwhile, the Respondent's failed to renew their respective licenses and both licenses lapsed on February 14, 1993.

8. Receiving no response to the December 28, 1992 communication, the Division sent a notice of nonrenewal dated March 3, 1993 to Respondent Willis Corroon stating that its license had lapsed effective February 14, 1993, the date the firm license should have renewed after submission of the 1992 renewal. (Exs. 1-3). Respondent Guerrette received a similar notice of nonrenewal with a lapse date of February 14, 1993. Id. On March 19, 1993 the Division received from Respondent Willis Corroon, by fax, a copy of the firm's renewal application with the firm's name change, a copy of Respondent Guerrette's certificate of licensing status, and a note indicating that a bond form was needed, which the firm was still putting together. (Ex. 2f). By letter to the firm dated March 23, 1993, (Ex. 2g), the Division again outlined the requirements for reinstating the now lapsed licenses. On or about April 9, 1993, in response to a telephone inquiry from Respondent Willis Corroon, the Division sent another fax (Ex. 2h) to the firm referencing again renewal deficiencies, the lack of response from the firm regarding those deficiencies, and repeating that the firm and individual licenses had lapsed.

9. Despite the foregoing communications the Respondents did not address the licensing deficiencies until May 25, 1993 when the firm application was sent to the Division to reinstate the Respondents' lapsed licenses. This information was received by the Division on June 10, 1993. (Exs. 1a, 2i and 2r.) The application, however, was still not complete since the Division did not have the bond, the notarized statement regarding business transacted, nor name change fees; all of which were required to reinstate the

lapsed licenses. The Division advised the firm of these deficiencies by fax (Ex. 2j) dated June 17, 1993. On August 5, 1993, the firm faxed (Ex. 2k) to the Division a copy of the bond, but made no mention of the notarized statement or the fees. The Division responded by fax, (Ex. 2l) reminding the firm that the Division needed the original bond form and notarized statement. The Division also advised the firm that the certificate of license status had expired and a current original certificate was needed. (Id.)

10. The deficiencies related to the 1992 renewals were not resolved until October 27, 1993 when the Division ultimately received the original bond form and certificate of license status. (Ex. 2s.) However, the Division still needed the firm's notarized statement of business transacted while not licensed, which the division did not receive from Respondent Willis Corroon until December 10, 1993. (Exs. 2m and 2q.) Approximately 12 months after the division put the Respondents on notice of application deficiencies, the licenses were reinstated on January 5, 1994. A January 7, 1994 letter (Exs. 1a and 2n) accompanying the reinstated licenses reminded the Respondents of statutory licensing requirements, and put them on notice that further action may be taken if there was a future violation of the insurance statutes. The letter specifically warned, in part, that:

* * *

AS 21.27.380 deals with license renewal, lapse, and reinstatement. In (a) of this section, it is clearly stated that the **"licensee is responsible for knowing the date that a license lapses and for renewing a license before expiration."** Thus, although there may have been an administrative oversight within your firm, Mr. Guerrette, the responsibility for making sure that your license is renewed timely rests with you. Part (b) of this section states that "a licensee may not act as or represent to be an insurance producer. . . during the time a license has lapsed."

* * *

A copy of this letter has been placed in your license file. **This correspondence will be given further evaluation in the event additional evidence is submitted to the Division** indicating unlicensed activity, noncompliance of Alaska statutes and regulations, or a complaint

from the insured involved while not appropriately licensed.

Please fully review all of these statutes and **be mindful of the possible consequences of a violation of any part of the Alaska Insurance Code.** (Emphasis Added.)

* * *

11. Respondent Guerrette's reinstated license was set to expire on April 16, 1994 under the new licensing system. This expiration date was reflected on the license issued to Respondent Guerrette. (Ex. 1d.) As was reflected on its license (Ex. 2o), Respondent Willis Corroon's license was set to expire on February 14, 1995. On February 1, 1994 the Division sent Respondent Guerrette a renewal notice. (Ex. 4.) On April 16, 1994 Respondent Guerrette's license lapsed. A lapse notice for license no. 6634 (Ex. 1a) and a notice of pending lapse for license no. 9493 (Ex. 2a) were sent on November 2, 1994 to Respondent Guerrette and Respondent Willis Corroon, respectively. Both notices were sent to 10660 Jasper Avenue, Ste 1200, Edmonton, CANADA. However, the postal code was different for Respondent Guerrette (T5J-3R8) than for Respondent Willis Corroon (T5J-3R827). A fax transmittal (Ex. 1a) from Respondent Willis Corroon on November 11, 1994 indicated that "we did not receive any notification to renew or invoice in respect of license numbered 6634".

12. The lapse notices were delayed from February to November 1994 because of a new computer system within the Division. Neither Respondent Guerrette nor Respondent Willis Corroon communicated with the Division regarding renewal nor made any attempt to renew Respondent Guerrette's license until after receiving one, or both, of the lapse notices in November 1994. On, or about, December 2, 1994, the Division received Respondent Guerrette's renewal form with a notarized statement that insurance was transacted during the time Guerrette's license was lapsed. (Ex. 1a.)

Respondent Willis Corroon also did not send its 1995 renewal information before its expiration date, and the firm was sent a lapse notice on February 14, 1995. (Ex. 4.) The Division subsequently received the firm's renewal information on February 17, 1995. (Ex. 2a.)

13. The expiration dates for license no. 7493-Respondent Corroon Melling (Exs. 1a and 2o) and license no. 6634-Respondent Guerrette (Ex. 1d) are clearly stated on the face of the license.

CONCLUSIONS OF LAW

I. **Jurisdiction** - The Director of the Division of Insurance has jurisdiction in this proceeding. AS 21.06.170-240; 21.27.410-440.

II. **Standard of Proof** - The standard of proof utilized in determining findings of fact was proof by a preponderance of the evidence.

III. **License Renewal Responsibilities** -

Under AS 21.27.380, the Director may renew a license if the licensee continues to be qualified and if the renewal license fee is received by the Director before the renewal date. Although the statute requires the Division to send renewal and lapse notices to the licensees, the statute expressly states that "[a] licensee is responsible for knowing the date that a license lapses and for renewing a license before expiration." As 21.27.380(a) (emphasis added). The statute also provides that a license will lapse if it is not renewed on or before the renewal date. AS 21.27.380(b).

The record herein establishes that the Respondents failed to meet their statutory duties with respect to the 1992 and 1994 license renewals for Respondent Guerrette, and the 1992, 1993, and 1995 license renewals for the firm (Respondent Willis Corroon)

in violation of AS 21.27.380(b). The Respondents did not submit information as requested for the 1992 renewals and failed to renew their license before the licenses expired in subsequent renewal years.

Respondents argue that they should not be penalized for late renewals because of alleged Division delays in 1992, 1993, and 1994, and because of an alleged address deficiency in Guerrette's 1994 renewal notice. Pursuant to AS 21.27.380(a) it is clear that any alleged delay or addressing deficiency does not excuse the Respondents' failure to meet statutory requirements.

IV. Transaction of Insurance Business with Lapsed License - AS

21.27.380(b) provides

(b) If a license is not renewed on or before the renewal date set by the director, the license lapses. **A licensee may not act as or represent to be an insurance producer, managing general agent, reinsurance intermediary broker, reinsurance intermediary manager, surplus lines broker, or independent adjuster during the time a license has lapsed.** The director may reinstate a lapsed license if the person continues to qualify for the license, pays renewal license fees, and delayed renewal penalty. **Reinstatement does not exempt a person from a penalty provided by law for transacting business while unlicensed.** A license may not be renewed if it has lapsed for two years or longer. (c) If a licensee does not wish to renew a license issued under this chapter, the licensee shall surrender the license to the director on or before the close of business of the renewal date in the manner prescribed in AS 21.27.460. (Emphasis Added.)

The notarized statement of Respondent Willis Corroon (Ex. 2q) demonstrates that insurance was transacted in violation of AS 21.27.380(b). The record does not establish whether or not a commission was received by the Respondents for these transactions. The fact that Respondents may not have earned commission on these transactions is not relevant to whether there was a violation of state law, but is relevant to the sanction(s) imposed. Since the record does not establish that any commissions

were paid, a penalty under AS 21.27.440(a)(1) cannot be imposed. However, a penalty pursuant to AS 21.27.440(a)(2) is appropriate.

V. **Statutory Sanctions** -

Sec. 21.27.410. Denial, nonrenewal, suspension, or revocation of licenses. (a) The director may deny issuance of or not renew a license, or may suspend or revoke a license issued under this chapter for any of the following:

* * *

(2) a violation or participation in a violation of a provision of this title;

* * *

(8) the conduct of affairs under a license if the licensee exhibits conduct considered by the director to reflect incompetence or untrustworthiness, or to be a source of potential injury and loss to the public;

* * *

(b) The license of a firm and its principal or manager may be denied, nonrenewed, suspended, or revoked for a violation or cause that relates to a person representing or acting on behalf of the firm.

Sec. 21.27.440. Penalties. (a) In addition to any other penalty provided by law, a person that the director determines under AS 21.06.170---21.06.240 has violated the provisions of this chapter is subject to

(1) a civil penalty equal to the compensation promised, paid, or to be paid, directly or indirectly, to a licensee in regard to each violation;

(2) either a civil penalty of not more than \$10,000 for each violation or a civil penalty of not more than \$25,000 for each violation if the director determines that the person willfully violated the provisions of this chapter; and

(3) denial, nonrenewal, suspension, or revocation of a license.

(b) An order issued by the director that levies a civil penalty shall specify the time period within which the civil penalty must be fully paid. The period may not be less than 15 days or more than one year after the date of the order. Upon failure to pay a civil penalty when due, the director shall revoke, without further hearing, all licenses of the licensee not already revoked.

VI. **Willful Violation** - AS 21.27.440(a)(2) provides for "*a civil penalty of not more than \$10,000 for each violation or a civil penalty of not more than \$25,000 for each violation if the director determines that the person wilfully violated the provisions of this chapter...*" (Emphasis added). Black's Law Dictionary (Sixth Ed.), at pgs. 1599-1600, defines Willful as follows:

Willful. Proceeding from a conscious motion of the will; voluntary; knowingly; deliberate. Intending the result which actually comes to pass; designed; intentional; purposeful; not accidental or involuntary.

Premeditated; malicious; done with evil intent, or with a bad motive or purpose, or with indifference to the natural consequences; unlawful; without legal justification.

An act or omission is "willfully" done, if done voluntarily and intentionally and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law. It is a word of many meanings, with its construction often influenced by its context. *Screws v. United States*, 325 U.S. 91, 101, 65 S.Ct. 1031, 89 L.Ed. 1495.

In civil actions, the word [willfully] often denotes an act which is intentional, or knowing, or voluntary, as distinguished from accidental. But when used in a criminal context it generally means an act done with a bad purpose; without justifiable excuse; stubbornly, obstinately, perversely. The word is also employed to characterize a thing done without ground for believing it is lawful or conduct marked by a careless disregard whether or not one has the right so to act. *United States v. Murdock*, 290 U.S. 389, 394, 395, 54 S.Ct. 223, 225, 78 L.Ed. 381.

In Alaska willful misconduct has been defined as volitional action taken either with knowledge, or wanton and reckless disregard of the possible results. *Aetna Casualty & Surety Co. v. Marion Equipment Co.*, ___ P.2d ___ (Alaska Supreme Court Opinion No. 4205, May 25, 1995).

The record in this proceeding does not establish that the Respondents' violations of AS 21.27.380 (a) and (b) were "willful". Consequently, the \$25,000 penalty provided for in AS 21.27.440(a)(2) would not apply here.

ANALYSIS

The imposition of a sanction in professional disciplinary proceedings may fulfill a variety of functions, such as: deterring the Respondent and other licensees from similar conduct, affirming professional standards and norms of reasonable conduct, and rehabilitation of the licensee. Punishment is not a proper purpose for an administrative

sanction as this function resides in criminal law. Of course, the overriding purpose of any sanction is to protect the public.

A license revocation, or refusal to renew a license, protects the public by removing dangerously incompetent or unethical licensees from the profession. A license revocation also reaffirms and reinforces professional norms and ethical standards of conduct, and deters others from similar conduct.

Fines and suspensions may also serve as deterrents to less serious breaches of professional or ethical standards, or serve to reinforce standards of practice or conduct. A suspension may also provide a period of time for licensee rehabilitation.

In determining the appropriate sanction(s) aggravating and mitigating factors must be considered. Alaska Survival v. State, 723 P.2d 1281, 1287 (Alaska 1986). The Respondents argue that they should not be penalized for late renewals because of alleged Division delays in 1992; 1993, and 1994 and because of an alleged address deficiency in Guerrette's 1994 renewal notice. However, pursuant to AS 21.27.380(a), any alleged delay or addressing deficiency does not excuse the Respondents' failure to meet statutory requirements.

As demonstrated in the record, the Division experienced some initial delays in processing 1992 renewals because of statutory changes to licensing requirements. The present action, however, is not related to those initial delays. The Division made allowances for delays associated with the licensing changes by giving licensees extra time to renew licenses. Respondents were given from August 26, 1992---when the Division received the firm's incomplete renewal package for 1992---until February 14, 1993---the date that the firm licensed lapsed under the new system---to complete the

renewal process for 1992; a period of approximately six months. During this period the Division communicated repeatedly with Respondents concerning what was needed to complete the 1992 renewal process. The Respondents did not comply with these communications; the December 28, 1992 letter being a case in point. The Respondents do not dispute receiving these communications. As the record demonstrates, licensing delays became attributable to Respondents at least by November 6, 1992 when the Division advised Respondents of what was needed to complete the renewals. At this time, the Respondents admitted that all licensing requirements had not been met in their initial submittal in August 1992.

Delays in 1993 cannot be attributed to the Division. At that point, the Respondents were responsible for allowing their licenses to lapse. It took until January 5, 1994 to reinstate the Respondents' license not because of the Division, but because the Respondents were not diligent in getting the appropriate licensing information to the Division.

The sole mitigating factor concerning the Respondents' violation is the fact that the Division delayed in sending lapse notices from February 1994 to November 1994. While this does not excuse the Respondents' failure to renew, it does constitute a mitigating factor.

The aggravating factors concerning the Respondents' violations of AS 21.27.380 are the length of the delays in renewing their respective licenses and the fact that subsequent violations occurred after the Respondents were specifically warned by the Division about the consequences of repeat conduct in a January 7, 1994 letter. (See Finding No. 10 herein.)

In addition to aggravation and mitigating circumstances, there are a number of other factors to be assessed in determining a licensee's fitness or unfitness to practice. These factors were set out in Morrison v. State Board of Education, 82 Cal. Rptr. 175, 461 P.2d 375 (CA. 1969). Factors listed in Morrison, in addition to aggravating and mitigating circumstances, included:

- The likelihood of the conduct in question affecting clients/patients;
- The degree of adversity;
- The proximity or remoteness in time;
- The type of license held;
- Praiseworthiness or blameworthiness of the motive resulting in the conduct;
- and
- The likelihood of a recurrence of the questioned conduct.

In the instant case, the Respondent has failed to abide by licensing requirements designed to protect the public by requiring licensees to demonstrate their financial stability and ethical and fiduciary responsibility and integrity. The record does not demonstrate that any client was actually harmed, but the conduct occurred over a long period of time and the Statement of Issues was issued reasonably contemporaneously to the violations in question.

The Respondents' violation in this proceeding resulted from carelessness rather than dishonesty, indicating that license revocation would be inappropriate.

Given the fact that the Respondents' violations occurred over a lengthy period of time, and the Respondents ignored both the Division's instructions as to appropriate conduct, and its warning about the consequences of repeat conduct, the likelihood of recurrence by the Respondents in the absence of sanctions appears high.

RECOMMENDATION

It is recommended that the Director impose the following sanctions to reaffirm the standards of appropriate conduct by insurance licensees, and to deter the Respondents herein, and other licensees, from the same, or similar conduct:

1. That pursuant to AS 21.27.410(a)(2) & (8) and AS 21.27.420 the license of Respondent Willis Corroon Melling, Ltd. (9493) be suspended until October 31, 1995.
2. That pursuant to AS 21.27.410(a)(2) & (8) and AS 21.27.420 the license of Respondent Armand Guerrette (6634) be suspended until October 31, 1995.
3. That pursuant to AS 21.27.410(a)(2) & (8) and AS 21.27.420 the license of Respondent Willis Corroon Melling, Ltd. (9493) be placed upon license probation until October 31, 1997.
4. That pursuant to AS 21.27.410(a)(2) & (8) and AS 21.27.420 the license of Respondent Armand Guerrette (6634) be placed upon license probation until October 31, 1997.
5. That pursuant to AS 21.27.440(a)(2) Respondent Willis Corroon Melling, Ltd. receive a \$2,500 civil penalty for failing to properly renew its license, and a \$2,500 civil penalty for transacting business without a current license; for a total civil penalty of \$5,000. That \$3,000 of the total penalty be stayed subject to the condition that Respondent Willis Corroon Melling Ltd. does not violate any provision of the insurance code during the period of probation established in paragraph 3 above. If Respondent Willis Corroon does violate the insurance code during the period of probation the stayed portion of the penalty may be imposed in addition to any monetary penalty or other sanctions imposed for the new violation(s). The \$2,000 portion of the total penalty that is not stayed, in addition to all reinstatement and renewal fees, shall be paid by the Respondent prior to the reissuance of the license at the expiration of the period of license suspension, and not later than one year from the date of the order implementingg the decision herein.
6. That pursuant to AS 21.27.440(a)(2) Respondent Armand Guerrette receive a \$2,500 civil penalty for failing to properly renew its license, and a \$2,500 civil penalty for transacting business without a current license; for a total civil penalty of \$5,000. That \$3,000 of the total penalty be stayed subject to the condition that Respondent Armand Guerrette does not violate any provision of the insurance code during the period of probation established in paragraph 4 above. If Respondent Armand Guerrette does violate the insurance code during the period of probation the stayed portion of the penalty may be imposed in addition to any monetary penalty or other sanctions imposed for the new violation(s). The \$2,000 portion of the total

penalty that is not stayed, in addition to all reinstatement and renewal fees, shall be paid by the Respondent prior to the reissuance of the license at the expiration of the period of license suspension, and not later than one year from the date of the order implementing the decision herein.

7. That, subject to the decision in this proceeding, the Respondents' licenses be reinstated after the expiration of the period of license suspension.

8. That nothing in the decision herein shall excuse the Respondents from compliance with all statutory, and regulatory requirements prior to reinstatement at the end of the period of license suspension.

Respectfully submitted this 18th day of September, 1995.



Frank Flavin
Administrative Hearing Officer

DIRECTOR'S DECISION AND ORDER

The Director having reviewed the Proposed Decision of the Hearing Officer In the Matter of Willis Corroon Melling, Ltd., Armand Guerrette, Respondents, Case No. LD 95-01, hereby

Option 1: adopts the Proposed Decision in its entirety and Orders that the Recommendation therein be implemented. Pursuant to AS 21.27.420(a) the license suspensions provided for herein shall be effective 10 days from the date of this Decision and Order.

Date: Sept 18, 1995

By: *J. Williams*
Director

Option 2: rejects the Proposed Decision and remands this case to the same/different Hearing Officer to receive additional evidence on the following issues

and adopts the balance of the Proposed Decision.

Date: _____

By: _____
Director