

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

In the Matter of:

Terry McDermott and the
McDermott Insurance Agency.

Case No. D96-07

STIPULATED AGREEMENT AND ORDER

The State of Alaska, Department of Commerce and Economic Development, Division of Insurance ("the division"), and Respondents Terry McDermott and the McDermott Insurance Agency (collectively referred to as "McDermott") stipulate and agree that the Statement of Accusation dated July 24, 1996 and the Amended Accusation dated September 22, 1997 are resolved as follows:

1. McDermott admits that he violated Alaska statutes and regulations relating to premium trust account handling as enumerated in the Amended Accusation. In particular, he admits to perpetuating substantial deficiencies in his premium trust account over an extended period of time and to utilizing trust account funds for nontrust purposes including for personal use in violation of AS 21.27.360.

2. As a result of the trust account deficiencies, McDermott was convicted of felony theft in the first degree. Under a Judgment and Order of Commitment dated April 7, 1997 as amended on or about June 26, 1997 (attached hereto as Exhibit A), McDermott was sentenced to four years with all but eight months suspended and a judgment of restitution was entered in favor of the division in an amount not to exceed \$159,785, but that the precise amount would be set at a later date to be determined by the Office of Special Prosecutions and the division. Any execution on the judgment of restitution is stayed so long as McDermott complies with the terms and special conditions of probation regarding payment of restitution. At sentencing, the judge ordered the division to confirm the amount of restitution that should be paid and report the same to the court.

STIPULATED AGREEMENT AND ORDER

Page 1

1 The division has requested documentation from 58 companies that had appointed McDermott as
2 an agent. In response to this request, seven companies have submitted documentation reflecting
3 monies owed by McDermott totaling approximately \$146,000. The division is still awaiting
4 responses from three companies regarding any amounts owed. It should be noted that McDermott
5 has not yet had an opportunity to either review or contest the financial information submitted by
6 these companies.

7 3. The division acknowledges that, despite the trust account deficiencies, it is not aware
8 of any complaints by a McDermott client who paid premiums to McDermott for insurance that was
9 never obtained. However, the division is aware of one complaint by a McDermott client where
10 McDermott failed to remit to the appropriate company monies paid by AFCO, a premium finance
11 company, for insurance covering the client. The division further acknowledges that in view of his
12 statutory violations and criminal conduct, McDermott voluntarily canceled his firm license
13 effective December 20, 1996 and surrendered his individual in a firm license effective April 28,
14 1997.

15 4. As a consequence of McDermott's statutory violations and felony theft conviction, the
16 parties agree to the following:

17 a. McDermott will not be eligible and will not make application for an insurance
18 license of any kind for two years from the date his individual in a firm license was surrendered and
19 ending April 27, 1999. During this time frame, McDermott also may not work in the insurance
20 industry and, therefore, does not have the director of insurance's approval to work in the insurance
21 industry as required under 18 U.S.C. 1033. McDermott's retired producer license will remain in
22 effect during this time frame for the sole purpose of allowing ^{TMHiro JWE SA} to receive previously earned
23 commissions so long as McDermott meets all of the conditions of his probation and this stipulated
24 agreement and order.

1 b. At the end of the two year period referenced in subparagraph a, McDermott may
2 apply for an insurance producer license and the division of insurance will issue a license subject
3 to the following conditions:

4 1. Except as noted herein, McDermott must comply with all applicable
5 licensing requirements outlined in statute or regulation including but not
6 limited to completion of an application, payment of license fees, and
7 completion of continuing education requirements.

8 2. McDermott may not have any direct or indirect control over any
9 premium trust accounts or monies deposited or disbursed from any trust
10 account. McDermott also may not receive or handle any client premium
11 payments. Because of these conditions, McDermott also may not be a
12 principal or compliance officer of a firm.

13 3. McDermott shall provide a copy of this stipulated agreement and order
14 to any insurance firm or company that employs him.

15 4. Prior to submitting his application, McDermott will take and pass the
16 state code portion of the insurance licensing examination for the line of
17 insurance for which he seeks licensing.

18 c. The conditions under subparagraph b will remain in effect for a period of five
19 years from the date McDermott receives a license under that subparagraph. At the end of that five
20 year period, McDermott may apply to the division for an insurance license that gives him the
21 authority to handle premium trust funds, subject to certain conditions and reporting requirements
22 to be established by the division including but not limited to providing to the division for approval
23 a plan of operation to ensure compliance with the insurance statutes and regulations, a description
24 of internal accounting procedures including premium trust account procedures and regular
25 financial reporting regarding the status of the premium trust account. The parties understand that
26 this agreement may be amended to enumerate such new conditions and reporting requirements.

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OK'd
JA
by
10/31/97

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d. McDermott agrees to pay a civil fine of \$40,000 with \$30,000 suspended. The unsuspended portion of the fine shall be payable in installments beginning on April 28, 2000. The installment payments for the first two years shall be no less than \$100 a month. After two years, the installment payments shall be no less than \$200 a month until the suspended portion of the fine is paid in full.

e. If McDermott complies with these conditions, does not violate the insurance code or regulations, and does not commit any crimes in the future involving dishonesty or breach of trust or that otherwise bear on his trustworthiness or competency to hold an insurance license, then this agreement and order will serve as the director's written consent allowing McDermott to engage in the business of insurance under 18 U.S.C. 1033(e)(2).

5. McDermott understands and agrees that any violation of this agreement and order or his probation requirements relating to insurance activities and payment of restitution will be grounds to revoke or nonrenew his insurance license and grounds to reinstate the suspended portion of the civil fine referenced in paragraph 4. McDermott further understands and agrees that if he violates the insurance code or applicable regulations in the future, the suspended portion of the civil fine will be reinstated and he will be subject to additional fines or sanctions as authorized under the insurance code.

6. If, during the term of this agreement and order, McDermott is incarcerated for probation violations, McDermott agrees to surrender his insurance license to the division if and when the superior court adjudges that a violation has occurred and should result in his incarceration or if McDermott fails to challenge the arrest and commitment.

7. This agreement in no way limits the division's authority to take action relative to McDermott's license if, in the future, he is convicted of a felony or a crime involving dishonesty or breach of trust or that otherwise reflects on his trustworthiness or competency as a licensee.

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8. McDermott has been advised by legal counsel regarding the nature and purpose of this agreement and order and understands it.

DATED: 10/3/97

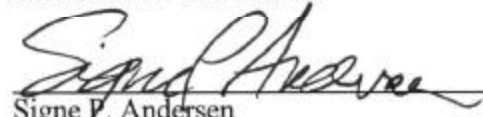

Terry McDermott
McDermott Insurance Agency

DATED: 10/3/97


John Abbott
Attorney for Respondent

DATED: 10/3/97

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: 
Signe P. Andersen
Assistant Attorney General

RECOMMENDED FOR APPROVAL

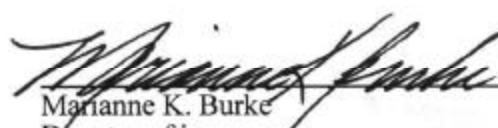
This Stipulated Agreement and Order is recommended for approval by the director of insurance this 3rd day of October, 1997.


Mark Figura, Hearing Officer

ORDER

IT IS ORDERED that this Stipulated Agreement and Order is adopted in full resolution of the issues in this case, and shall constitute the final order in this matter.

Dated this 6th day of October, 1997.


Marianne K. Burke
Director of insurance
State of Alaska

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

In the Matter of)
TERRY F. MC DERMOTT and)
MC DERMOTT INSURANCE AGENCY)

Case No. D96-07

AMENDED STATEMENT OF ACCUSATION

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

1. McDermott Insurance Agency (MIA) was a licensed insurance producer firm that operated in the State of Alaska under firm license no. 8411 until on or about December 20, 1996 when the firm license was cancelled. The principal and compliance officer of MIA was Terry F. McDermott (McDermott) operating in the State of Alaska under insurance license no. 2682. On or about December 30, 1996, McDermott's individual license was transferred to Key Insurance where he continued to work in insurance until on or about April 7, 1997.

2. On or about June 26, 1996, Division personnel, under the authority of AS 21.06.120 - 21.06.160, initiated an examination of the fiduciary accounts and records of MIA to determine MIA's and McDermott's compliance with AS 21.27.350, 21.27.360, and 3 AAC 23.500 - 3 AAC 23.730.

3. During an interview conducted at the time of the examination by Division investigator, Rick Jones, McDermott freely admitted that the MIA premium trust account was deficient by approximately \$160,000, in violation of state law. McDermott assisted Division personnel in gaining entry to the MIA computer system to examine the accounts.

4. On or about June 28, 1996, the Division issued a cease and desist order under which McDermott, among other things, was prohibited from depositing or withdrawing funds

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1 from his trust account at Key Bank of Alaska, account no. 2952041013, without Division
2 approval. This order was amended after McDermott transferred his license and accounts to Key
3 Insurance.

4 5. The Division completed an examination of the MIA fiduciary accounts for the
5 period of December 31, 1995 through June 26, 1996 that confirmed McDermott's admission of
6 an out-of-trust situation.

7 6. Pursuant to AS 21.06.150, a proposed examination report was submitted to
8 McDermott on or about October 9, 1996. On or about November 15, 1996, McDermott
9 submitted to the Division a response to the examination report in which he asserted his fifth
10 amendment right against self incrimination and, thereby, denied the truth and/or accuracy of the
11 matters set forth in the report.

12 7. On or about November 26, 1996, the Division filed its final examination report
13 under Order No. FE 96-04. This report is incorporated herein by reference as if set forth in its
14 entirety.

15 COUNT I

16 8. The Director realleges paragraphs 1 through 7.

17 9. As part of the examination, the Division reviewed the customer statements of
18 account. These statements reveal a credit balance of account receivables totaling \$12,431 on
19 June 26, 1996, most of which had been owed to customers for more than 90 days.

20 10. Based on the review referenced in paragraph 6, MIA and McDermott have
21 violated 3 AAC 23.600, AS 21.27.350, and 21.27.360 by failing to disburse return premiums
22 owed to customers within 45 days of receipt of funds or advice of credit. As a result of this
23 violation, MIA and McDermott are subject to license denial, revocation, suspension, or
24 nonrenewal under AS 21.27.360, 21.27.410, and 21.27.440; an order requiring restitution of the
25 return premiums owed and not paid to customers under AS 21.27.360(c); a civil penalty of not
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1 more than \$10,000 under AS 21.27.440; and a civil penalty of not more than \$50,000 under AS 21.27.360(c).

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3 COUNT II

4 11. The Director realleges paragraphs 1 through 10.

5 12. The Division's examination of MIA's premium trust account has revealed that
6 MIA and McDermott made disbursements from the trust account in even dollar amounts
7 indicating improper transfer procedures, withdrawal of funds that did not constitute earned
8 commission, and inadequate documentation as required under 3 AAC 23.620.

9 13. The conduct referenced in paragraph 12 constitutes a violation of 3 AAC 23.620
10 and AS 21.27.360, which is grounds to deny issuance, nonrenew, revoke, or suspend MIA's and
11 McDermott's licenses under AS 21.27.360, 21.27.410, and 21.27.440; to impose a civil penalty
12 of not more than \$10,000 under AS 21.27.440; and to impose a civil penalty of not more than
13 \$50,000 under AS 21.27.360(c).

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15 COUNT III

16 14. The Director realleges paragraphs 1 through 13.

17 15. The Division's examination of MIA's premium trust account also has revealed
18 several disbursements from the trust account for personal use including disbursements to
19 McDermott's former wife, personal friends of McDermott, and \$5,000 to the Internal Revenue
20 Service.

21 16. The conduct referenced in paragraph 15 constitutes a violation of 3 AAC 23.630
22 and AS 21.27.360 and is grounds to deny issuance, nonrenew, revoke, or suspend MIA's and
23 McDermott's licenses under AS 21.27.360, 21.27.410, and 21.27.440; to impose a civil penalty
24 of not more than \$10,000 under AS 21.27.440; to impose a civil penalty of not more than
25 \$50,000 under AS 21.27.360(c); and to order restitution as provided in AS 21.27.360(c).

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COUNT IV

17. The Director realleges paragraphs 1 through 16.

18. The Division's examination of MIA's premium trust account, bank reconciliations, and balance sheets revealed that MIA and McDermott allowed overdrafts to occur in the premium trust account over a period of several months and that as of June 26, 1996, MIA's firm premium trust account showed a deficiency of approximately \$159,758 owing to insurance companies.

19. The conduct referenced in paragraph 18 and McDermott's admission that MIA's trust account was deficient demonstrate wilful violations of 3 AAC 23.610, 3 AAC 23.620, 3 AAC 23.630, AS 21.27.350, and 21.27.360. These violations are grounds to deny issuance, nonrenew, revoke, or suspend MIA's and McDermott's licenses under AS 21.27.360, 21.27.410, and 21.27.440; to impose a civil penalty of not more than \$25,000 under AS 21.27.440 for wilful violations; to impose a civil penalty of not more than \$50,000 under AS 21.27.360(c); and to order MIA and McDermott to make restitution of amounts sufficient to cover the deficiency in the trust account under AS 21.27.360(c).

COUNT V

20. The Director realleges paragraphs 1 through 19.

21. MIA and McDermott have committed multiple violations of AS 21 and premium trust account regulations that reflect untrustworthiness or incompetence, which are grounds to deny issuance, nonrenew, revoke or suspend MIA's and McDermott's licenses under of AS 21.27.410 (a) (1), (2), (4), (8), and 21.27.440.

COUNT VI

22. The director realleges paragraph 1 through 21.

1 23. On or about April 7, 1997, a Judgment and Order of Commitment was entered
2 in the State of Alaska v. Terry F. McDermott, Case No. 3ANS-96-9609 (CR) convicting
3 McDermott of felony theft in the first degree under AS 14.46.120(a), imposing a sentence of
4 four years with all but eight months suspended, and entering a judgment for restitution in the
5 amount of \$159,785 in favor of the Department of Commerce and Economic Development,
6 Division of Insurance.

7 24. McDermott's felony conviction is grounds to deny issuance, nonrenew, revoke,
8 or suspend his license under AS 21.27.410.

9 Wherefore, the Division seeks the following relief:

- 10 a. revocation, nonrenewal, or denial of McDermott's individual and firm
11 licenses
12 b. imposition of civil penalties as allowed under AS 21.27.360(c) and AS
13 21.27.440 for the purpose of reimbursing the Division of Insurance for
14 its costs in the investigation and examination of McDermott.

15 DATED this 22 day of September, 1997 at Anchorage, Alaska.

16 BRUCE M. BOTELHO
17 ATTORNEY GENERAL

18 By: *Virginia A. Rusch*
19 for Signe P. Andersen
Assistant Attorney General

20 This is to certify that on this date a copy
21 of the foregoing is being mailed ~~hand~~
22 ~~delivered~~ to the following attorneys or
parties or records:

23 John Abbott

24 *[Signature]* 9/22/97
Signature Date

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STATE OF ALASKA
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DIVISION OF INSURANCE

In the Matter of)
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TERRY F. MC DERMOTT and)
MC DERMOTT INSURANCE AGENCY)
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Case No. D96-07

STATEMENT OF ACCUSATION

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

1. McDermott Insurance Agency (MIA) is a licensed insurance producer firm operating in the State of Alaska under firm license no. 8411. The principal and compliance officer of MIA is Terry F. McDermott (McDermott), operating in the State of Alaska under insurance license no. 2682.

2. On or about June 26, 1996, Division personnel, under the authority of AS 21.06.120 - 21.06.160, initiated an examination of the fiduciary accounts and records of MIA to determine MIA's and McDermott's compliance with AS 21.27.350, 21.27.360, and 3 AAC 23.500 - 3 AAC 23.730.

3. During an interview conducted at the time of the examination by Division investigator, Rick Jones, McDermott freely admitted that the MIA premium trust account was deficient by approximately \$160,000, in violation of

1 state law. McDermott assisted Division personnel in gaining entry to the MIA
2 computer system to examine the accounts.

3 4. The examination of the MIA fiduciary accounts for the period of
4 December 31, 1995 through June 26, 1996 confirmed McDermott's admission of
5 an out-of-trust situation.

6
7 COUNT I

8 5. The Director realleges paragraphs 1 through 4.

9 6. As part of the examination, the Division has reviewed the customer
10 statements of account. These statements reveal a credit balance of account
11 receivables totaling \$12,431 on June 26, 1996, most of which had been owed to
12 customers for more than 90 days.

13 7. Based on the review referenced in paragraph 6, MIA and
14 McDermott have violated 3 AAC 23.600, AS 21.27.350, and 21.27.360 by failing
15 to disburse return premiums owed to customers within 45 days of receipt of
16 funds or advice of credit. As a result of this violation, MIA and McDermott are
17 subject to license revocation or suspension under AS 21.27.360, 21.27.410, and
18 21.27.440; an order requiring restitution of the return premiums owed and not
19 paid to customers under AS 21.27.360(c); a civil penalty of not more than \$10,000
20 under AS 21.27.440; and a civil penalty of not more than \$50,000 under
21 AS 21.27.360(c).

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23 COUNT II

24 8. The Director realleges paragraphs 1 through 7.

COUNT IV

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2 14. The Director realleges paragraphs 1 through 13.

3 15. The Division's review of MIA's premium trust account, bank
4 reconciliations, and balance sheets has reveal that MIA and McDermott allowed
5 overdrafts to occur in the premium trust account over a period of several months
6 and that as of June 26, 1996, MIA's firm premium trust account showed a
7 deficiency of approximately \$159,758 owing to insurance companies.
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9 16. The conduct referenced in paragraph 15 and McDermott's admission
10 that MIA's trust account was deficient demonstrate wilful violations of 3 AAC
11 23.610, 3 AAC 23.620, 3 AAC 23.630, AS 21.27.350, and 21.27.360. These
12 violations are grounds to revoke or suspend MIA's and McDermott's licenses
13 under AS 21.27.360, 21.27.410, and 21.27.440; to impose a civil penalty of not
14 more than \$25,000 under AS 21.27.440 for wilful violations; to impose a civil
15 penalty of not more than \$50,000 under AS 21.27.360(c); and to order MIA and
16 McDermott to make restitution of amounts sufficient to cover the deficiency in
17 the trust account under AS 21.27.360(c).
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COUNT V

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21 17. The Director realleges paragraphs 1 through 16.

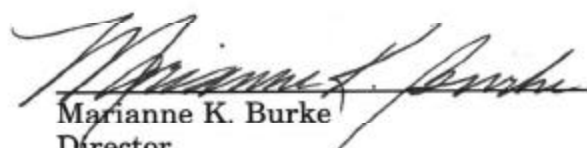
22 18. MIA and McDermott have committed multiple violations of AS 21
23 and premium trust account regulations that reflect untrustworthiness or
24 incompetence, which are grounds to revoke or suspend license nos. 8411 and
25 2682 under of AS 21.27.410 (a) (1), (2), (4), (8), and 21.27.440.
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Wherefore, the Division seeks the following relief:

- a. revocation or suspension of MIA's and McDermott's licenses;
- b. an order of restitution for \$172,189 or a subsequently determined amount that represents the total deficiency in MIA's premium trust account including refunds owed to clients; and
- c. imposition of civil penalties as allowed under AS 21.27.360(c) and AS 21.27.440.

DATED this 24th day of July, 1996 at Anchorage, Alaska.


Marianne K. Burke
Director
Division of Insurance

ACCMIA.PBK