

1 STATE OF ALASKA

2 DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

3 BEFORE THE DIVISION OF INSURANCE

4
5 IN THE MATTER OF
6 DUANE A. BANNOCK and
7 KENAI CHRYSLER CENTER, INC.
8 Licensees.

9 Case No. D99-07

10
11 **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER**

12
13 **I. Background and Procedural History**

14 Kenai Chrysler Center, Inc. ("KCC") holds firm license number 8429. Duane Bannock
15 of KCC holds principal in a firm license number 7405. Mr. Bannock's license expired on July
16 29, 1998, and KCC's license expired on October 14, 1998.

17 In April of 1999, Mr. Bannock, KCC and the Division entered into a Stipulated
18 Agreement and Order whereby both licenses were reinstated effective February 1, 1999. Mr.
19 Bannock and KCC agreed to pay a civil fine of \$31,216.53, with \$15,000 suspended. However,
20 Mr. Bannock and KCC reserved their right to seek a hearing on the matter, and the Division
21 agreed that if the director were to adopt an order imposing no fine or a smaller fine, the Division
22 would refund the appropriate amount.

23 Mr. Bannock and KCC did request a hearing, which was held on August 26, 1999 in
24 Juneau. Mr. Bannock appeared telephonically from Kenai, with Bob Favreto, owner of KCC.
25 Assistant Attorney General Signe Andersen appeared telephonically from Anchorage,
representing the Division of Insurance. Linda Brunette, the supervisor of the Division's

1 licensing section testified, as did Mr. Bannock. The following facts were established at the
2 hearing.

3 Mr. Bannock has been licensed since February 5, 1992. He was originally licensed as a
4 principal agent, until July of 1992 when new legislation changed the licensing scheme. He is
5 currently licensed as a principal in a firm. KCC was originally licensed on October 15, 1984
6 under the name Craycroft Chrysler. On July of 1996 the name was changed to Kenai Chrysler
7 Center, Inc. KCC's license designates Mr. Bannock as the principal.

8 Before the statutory changes to the licensing scheme in 1992, licenses were issued
9 annually expiring on June 30 of each year. After 1992, licenses have been issued biennially,
10 expiring on the licensee's birthday or, for firms, the day the license was first issued. Thus, Mr.
11 Bannock's license expires on July 29 of even years, and KCC's expires on October 14 of even
12 years. The expiration date is printed on the face of each license. Prior to 1998, Mr. Bannock's
13 license has always been timely renewed. The Division did not present any evidence that KCC's
14 license has not also always been timely renewed.

15 The Division presented evidence that on May 29, 1998, or within two days of that date, it
16 sent a renewal notice to Mr. Bannock. The Division also presented evidence that on July 30,
17 1998 it sent a lapse notice to Mr. Bannock by first class mail and obtained a certificate of service.
18 Mr. Bannock testified that he did not receive either of these notices.

19 On or about August 4, 1998, the Division sent a renewal notice to KCC. The renewal
20 notice contains the following language:

21 **FAILURE TO SUBMIT ALL RENEWAL REQUIREMENTS BY THE DUE DATE**
22 **WILL RESULT IN A LAPSE OF YOUR LICENSE.** The transaction of insurance
business without a valid license is a violation of AS 21.27.380(b).

23 Further down on the same page, the form reads,

24 **IF ALL ITEMS ARE NOT COMPLETED AND SUBMITTED, YOUR LICENSE WILL**
25 **NOT BE RENEWED AND THERE WILL BE A LAPSE IN LICENSURE.** The
transaction of insurance business without a valid license is a violation of AS
21.27.380(b).

1 On October 17, 1998, the Division sent a lapse notice to KCC. This notice advised that KCC's
2 license had lapsed for nonrenewal, and contained the following language:

3 A licensee may not act as or represent to be an insurance producer, managing general
4 agent, reinsurance intermediary broker, reinsurance intermediary manager, surplus lines
5 broker, or independent adjuster during the time a license has lapsed (AS 21.27.350(b)).
Penalties are provided for a person transacting business without a valid license.

6 The first communication the Division received from Mr. Bannock was on October 21,
7 1998, when the Division received a Firm Renewal Form from KCC, signed by Mr. Bannock with
8 a \$200 renewal fee.

9 On October 23, 1998, the Division sent Mr. Bannock a fax stating that the renewal form
10 had been received on October 21, but that the license had lapsed on October 15. The following
11 notation was on this fax:

12 **PLEASE NOTE:** You are currently not licensed to transact the business of insurance in
13 this state pursuant to Alaska Statute 21.27.010(a) which states in part... "a person may
14 not act as or represent to be an insurance producer...in this state or relative to a subject
15 resident, located, or to be performed in this state unless licensed under this chapter." Any
16 subsequent violation of unlicensed activity or other violations of Alaska insurance laws
will subject you and/or your firm to the appropriate administrative action, as well as
possible criminal remedies.

17 The notice then went on to explain that KCC's license could not be renewed until Mr. Bannock's
18 license as Principal of a Firm was renewed, or until a new licensed individual was named as
19 Principal/Compliance Officer.

20 On December 14, 1998 Mr. Bannock submitted a Reinstatement of Lapsed License form
21 for himself and for KCC. Attached was a Certificate of Completion of Continuing Education,
22 and a notarized list of all transactions that had occurred during the period his license had lapsed,
23 including the names and addresses of each insured and the amount of premium and commission
24 collected. This list indicated that 71 policies had been issued, for a total premium of \$69,370.18.
25 Of that amount, \$31,216.53 was commission. Of the 71 policies listed, at least 13 had been

1 issued after October 23, 1998. The Certificate of Completion indicated that Mr. Bannock had
2 completed two courses, but it did not indicate the number of CE credit hours that each course
3 represented.

4 On December 15, 1998 the Division sent Mr. Bannock a fax advising that it had received
5 the form providing information on business conducted during the lapsed period, and advising
6 that a renewal form, a CE reporting form and an additional \$100 were required to reinstate the
7 licenses. Attached to this fax were a blank renewal form and a CE reporting form.

8 On December 16, 1998 the Division sent Mr. Bannock another fax with essentially the
9 same information as the December 15th fax. On December 17, 1998 Mr. Bannock sent a fax
10 back to the Division containing the completed renewal form and CE reporting form. This form
11 indicated that Mr. Bannock had not completed a sufficient number of hours to renew his license.
12 The Division communicated this fact to him at some point, but it is not clear from the record
13 exactly when.

14 On January 28, 1999 Mr. Bannock faxed a new CE reporting form which also included a
15 class he had completed in November of 1998. This form showed that Mr. Bannock did have
16 sufficient CE credits to have his license renewed. The Division received the original hard copy
17 of this fax in the mail on February 1, 1999, and ultimately both licenses were reinstated effective
18 that day.

19 The Division decided to assess fines against Mr. Bannock and KCC for the business
20 conducted during the lapse period. Mr. Bannock objected to the fines, but entered into the
21 Stipulated Agreement with the Division on April 5, 1999, so that he could get his license
22 reinstated while the penalty issue was pending in this case.

23 At the hearing, Ms. Brunette testified that in assessing fines, the Division considers the
24 following:

- 25 1. The amount of commission earned during the unlicensed period;

- 1 2. whether the licensee was notified of the lapse;
- 2 3. how many times the licensee was notified;
- 3 4. the volume of business generated; and
- 4 5. whether it was a first offense or part of an ongoing pattern.

5 In this case, the Division considered that this was a first offense by Mr. Bannock and KCC. The
6 Division noted that besides the mailings that Mr. Bannock apparently did not receive, Mr.
7 Bannock and KCC continued to conduct business after receiving actual notice that the licenses
8 were lapsed and warnings that penalties would be assessed if KCC continued to conduct the
9 business of insurance. The Division also noted that a relatively large volume of business had
10 been conducted during the lapsed periods. Based on these considerations, the Division decided
11 to assess a fine of \$31,216.53 with \$15,000 suspended. The suspended portion would be
12 reinstated if Mr. Bannock and KCC violate any insurance laws within the next two years.

13 Ms. Brunette testified that she makes recommendations for fine assessments
14 approximately once a month. Typically, the Division fines the amount of commissions earned,
15 and then adjusts the suspended portion according to the factors listed above. Ms. Brunette
16 opined that the dollar amount in this case was unusually large, due to the unusually large amount
17 of commissions earned. Proportionately, however, she felt that a fine of approximately 50% of
18 commissions earned during the lapse period was consistent with fines assessed against other
19 licensees in similar situations. She stated that the Division might be inclined to suspend a larger
20 amount if all the commission had been made in a single or a few transactions, but in this case the
21 Division was particularly cognizant of the 71 different transactions, and the number that had
22 occurred following express written warning that penalties would be assessed.

23 Mr. Bannock testified that his principle business is the sale of cars, not insurance. While
24 Mr. Bannock acknowledges his statutory duty to know and adhere to the insurance laws, he notes
25 that he is "a car guy" being held to the same standard as a full-time insurance professional. He

1 points out that he had no intent to harm the public, that there was no evidence of actual harm to
2 any member of the public, that he promptly provided all documents the Division requested, that
3 he accurately, truthfully, and honestly complied with all Division requests, that he did nothing to
4 hinder any investigation, that he was polite and cooperative to the Division staff he spoke with,
5 that he has brought himself into compliance with the law, and that he is now fully aware of the
6 importance of renewing licenses in a timely fashion. Mr. Bannock had been provided the
7 opportunity to review all cases in which the Division assessed fines in the last 5 years. The
8 parties essentially agreed that the fine for Mr. Bannock and KCC was among the highest of
9 these. Mr. Bannock stated that he had learned that at one time in the mid 1980s that KCC's
10 business predecessor, Craycroft Chrysler, had been in a lapsed state for a full year. In that case,
11 a fine representing no more than the late fees had been imposed, based on the lack of evidence of
12 harm to the public. Mr. Bannock requests that, based on the factors above, a similar approach be
13 taken in this case.

14 15 **II. Issues**

16 The only issue presented in this hearing is what penalty, if any, should be assessed
17 against Mr. Bannock and KCC for conducting the business of insurance while their respective
18 licenses were in a lapsed state.

19 **III. Findings of Fact**

20 1. The Division presented credible evidence that it properly mailed a renewal notice and
21 a lapse notice to Mr. Bannock in May of 1998 and July of 1998 respectively. There is no reason
22 to suspect the truthfulness of Mr. Bannock's assertion that he never received these documents.
23 Whether they were lost in the mail, or lost, misdirected or misfiled by KCC's clerical staff
24 cannot be answered.
25

1 business of insurance without a license deters non-licensees or those with lapsed licenses from
2 illegally conducting the business of insurance. *See* 43 Am. Jur. 2^d §§18; 22.

3 Imposing fines in the manner suggested by Mr. Bannock would eliminate the deterrent
4 effect of the director's statutory authority to assess civil penalties. If licensees do not have to pay
5 more than the standard late fee for conducting business with lapsed licenses, it is not difficult to
6 foresee that the number of people conducting the business of insurance with lapsed license will
7 dramatically increase. There would be little motivation for anyone to renew on time if nobody
8 expected a substantial penalty.

9 From a licensee's perspective, a \$16,000 fine for conducting business with a lapsed
10 license may seem harsh when no consumers appear to have been directly harmed. On the other
11 hand, neither Mr. Bannock nor KCC had any legal right to collect any of the commissions they
12 did during the lapse period. Thus, one could view the suspension of a portion of the
13 commissions as a windfall to KCC. In effect, because of its good record and the other mitigating
14 circumstances in its favor, KCC has been allowed to retain \$15,000 that it did not have a legal
15 right to collect in the first place.

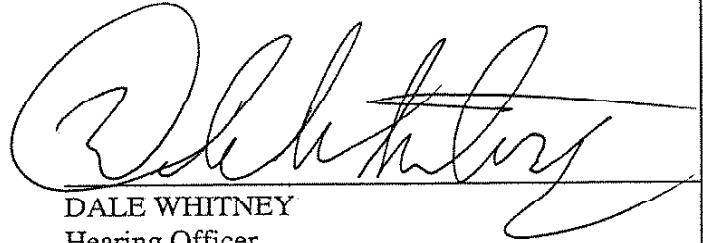
16 The criteria used by the Division to establish penalties is rationally related to the goal of
17 ensuring that all persons and firms conducting the business of insurance are properly licensed.
18 The approach used by the Division in this case appears to be at least roughly consistent with the
19 way similar cases have been handled. If the penalty amount is high in this case, it is due to the
20 fact that KCC conducted an unusually high volume of business without a license. Further,
21 although the statutory burden is squarely on the licensee to renew before the expiration date
22 printed on the face of the license, it cannot be overlooked that KCC continued to conduct
23 business after being repeatedly advised not to, and was specifically warned that it would be
24 penalized if it did. Mr. Bannock and KCC cannot claim that they did not have fair warning in
25 this case.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IV. Proposed Decision

The Director should affirm the civil penalty assessed by the Division as outlined in the Stipulated Agreement and Order of April 9, 1999.

Signed at Juneau this 10th day of September, 1999.



DALE WHITNEY
Hearing Officer

State of Alaska
Department of Commerce & Economic Development
Division of Insurance
PO Box 110805
Juneau, Alaska 99811-0805
(907) 465-2515 • Fax (907) 465-3422

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

IN THE MATTER OF
DUANE A. BANNOCK and
KENAI CHRYSLER CENTER, INC.
Licensees.

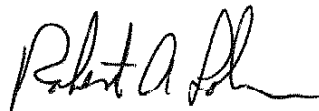
Case No. D99-07

DIRECTOR'S DECISION

Having reviewed the Findings of Fact, Conclusions of Law and Proposed Order of the hearing officer in this case, the Director of Insurance hereby

 i adopts the Proposed Order in its entirety.

Signed this 24th day of September, 1999.



Robert A. Lohr, Director of Insurance

 rejects the Proposed Order and remands this case to the hearing officer to receive additional evidence on the following issues:

Signed this day of September, 1999.

Robert A. Lohr, Director of Insurance

 rejects the Proposed Order and orders that the record be prepared for review.

Signed this day of September, 1999.

Robert A. Lohr, Director of Insurance

1 STATE OF ALASKA
2 DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
3 DIVISION OF INSURANCE
4 P.O. BOX 110805
5 JUNEAU, ALASKA 99811-0805
6

7 In the Matter of:

8 DUANE A. BANNOCK and
9 KENAI CHRYSLER CENTER, INC.

10 Licensees.
11

12 Case No. D99-07
13

14 STIPULATED AGREEMENT AND ORDER
15

16 The Division of Insurance, Department of Commerce and Economic Development (division),
17 and Duane A. Bannock (Bannock) and Kenai Chrysler Center, Inc. (KCC), the insurance
18 licensees in this case, stipulate and agree as follows:

19 BACKGROUND
20

21 A. KCC holds firm license #8429 and Bannock holds principal in a firm license
22 #7405. These licenses were scheduled to expire on July 29, 1998 and October 14, 1998,
23 respectively.
24

25 B. Because the division did not receive all renewal information prior to the licenses
26 expiration dates, Bannock's insurance license lapsed effective July 30, 1998 and KCC's license
27 lapsed effective October 17, 1998. Although Bannock sent completed renewal forms to the
28 division in October and December 1998, all the license renewal requirements were not met until
29 February 1, 1999.

1 C. To reinstate their licenses, Bannock and KCC have submitted notarized affidavits
2 stating that the business of insurance was transacted while the licenses were in lapse status, from
3 July 30, 1998 through December 11, 1998. For this business, Bannock and KCC received
4 commissions in the amount of \$31,216.53, which represents violations of AS 21.27.010 and
5 21.27.380(b).

6 D. Prior to this instance, Bannock and KCC, under the present ownership, have never
7 allowed their Alaska insurance licenses to lapse and, to the division's knowledge, they have not
8 engaged in unlicensed activity.

9 E. In a letter dated February 11, 1999, Linda Brunette, Licensing Supervisor for the
10 division, proposed a settlement to resolve the violation of the insurance code arising from
11 transacting insurance without a valid license. The proposed terms included reinstatement of
12 KCC's and Bannock's licenses and the imposition of a civil fine authorized under AS 21.27.440
13 in the amount of \$31,216.53 with \$15,000 suspended.

14 F. By letter dated March 9, 1999, Bannock and KCC agreed to the proposed terms
15 outlined in Ms. Brunette's letter, but also requested that a hearing be held at a later date. In a
16 subsequent letter, Bannock clarified that the basis for hearing was to require proof from the state
17 of proper notification of the their license renewals.

18
19 TERMS AND CONDITIONS

20 1. Bannock and KCC agree to waive the requirement under AS 21.06.180(b) that the
21 hearing be held within 30 days after the director receives the request for hearing as long as the
22 hearing is held at a time mutually acceptable to all the parties and within a reasonable time after
23 the date this agreement and order is signed by the director.

24 2. Under AS 21.27.420(c), the division agrees to reinstate Bannock's and KCC's
25 insurance licenses effective February 1, 1999, subject to the condition that Bannock and KCC
26 pay a civil fine of \$31,216.53, as allowed under AS 21.27.440(a), with \$15,000.00 suspended.
27 The unsuspended portion of the penalty is payable no later than twelve months from the date this
28 agreement and order is signed by the director.

1 3. If the director adopts an order after hearing that does not impose a civil fine or
2 that imposes a lesser fine, then the division agrees to refund the civil fine in full or in part as
3 dictated by that order.

4 4. In the event Bannock and KCC violate the insurance code or applicable
5 regulations during the next two years (in particular, failure to renew their licenses timely), the
6 suspended portion of the fine referenced in paragraph 2 will be reinstated. Bannock and KCC
7 also will be subject to any and all sanctions authorized by statute including imposition of
8 additional fines or penalties.

9 5. By signing this agreement, Bannock and KCC understand and agree that any
10 failure to comply with the conditions of this agreement may be grounds to revoke, suspend, or
11 non-renew Alaska insurance licenses #8429 and #7405.

12 DATED: 4/9/99

DIVISION OF INSURANCE

13 By: Linda Brunette
14 Linda Brunette
15 Licensing Supervisor

16 DATED: 4-5-99

17 DBannock
18 Duane A. Bannock

19 DATED: 4-5-99

KENAI CHRYSLER CENTER, INC.

20 By: DBannock
21 Duane A. Bannock, Principal
22 and Compliance Officer

23
24 Approved as to form and content:

25 DATED: 4/8/99

BRUCE M. BOTELHO
ATTORNEY GENERAL

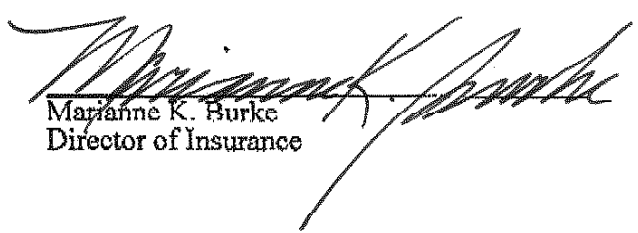
26 By: Signe P. Andersen
27 Signe P. Andersen
28 Assistant Attorney General
29

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

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 9th day of April, 1999.


Marianne K. Burke
Director of Insurance